

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SLEEPY'S, LLC, : 07 CV 4018 (TCP) (ARL)  
:  
Plaintiff, :  
:  
:  
- against - : **[PROPOSED] JOINT PRETRIAL**  
**ORDER**  
SELECT COMFORT WHOLESALE CORPORATION, :  
SELECT COMFORT RETAIL CORPORATION and :  
SELECT COMFORT CORPORATION, :  
:  
Defendants. :  
:  
----- x

Platt, J.

The parties, by their undersigned counsel of record, stipulate and agree that this is their  
Joint Pretrial Order:

*i. The full caption of the action.*

The full caption is set forth above.

*ii. The names, addresses (including firm names), and telephone and fax numbers of trial  
counsel.*

**Plaintiff:**

L. Donald Prutzman  
George F. du Pont  
Tannenbaum Helpern Syracuse & Hirschtritt LLP  
900 Third Avenue  
New York, NY 10022-4775  
Tel: (212) 508-6739 (Prutzman)  
Fax: (212) 202-6491 (Prutzman)  
Tel: (212) 508-6743 (du Pont)  
Fax: (212) 202-7516 (du Pont)

**Defendant:**

Herbert C. Ross, Jr.  
Olshan Grundman Frome Rosenzweig & Wolosky LLP  
Park Avenue Tower  
65 East 55th Street  
New York, New York 10022  
(212) 451-2300 (Telephone)  
(212) 451-2222 (Facsimile)

Andrew S. Hansen  
Heidi A.O. Fisher  
Joseph S. Miller  
Oppenheimer Wolff & Donnelly LLP  
3300 Plaza VII Building  
45 South Seventh Street  
Minneapolis, Minnesota 55402  
(612) 607-7000 (Telephone)  
(612) 607-7100 (Facsimile)

*iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.*

Defendants removed this action from the Supreme Court of the State of New York, County of Nassau pursuant to 28 U.S.C. § 1441, by petition for removal filed September 25, 2007. Plaintiff asserts that the Court has subject matter jurisdiction pursuant to the following statutes:

28 U.S.C. § 1331 – The action arises under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

28 U.S.C. § 1332(a)(1) – Plaintiff is a Delaware limited liability company, whose member, Sleepy's Holdings, LLC is a Delaware limited liability company, whose members, in turn, are Sleepy's Reorganization, Inc., a New York corporation, SINT, Inc., a Delaware

corporation, and Harry Acker, a citizen of Florida. Defendants Select Comfort Wholesale Corporation, Select Comfort Retail Corporation and Select Comfort Corporation are each Minnesota Corporations with their principal places of business in Minnesota. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

28 U.S.C. § 1338(a), (b) – This action arises under an act of Congress relating to trademarks, namely § 43(a) of the Lanham Act, 15 U.S.C. § 1225(a), and includes a claim of unfair competition that is joined with a substantial and related claim under the trademark laws of the United States.

28 U.S.C. § 1367 – This Court has supplemental jurisdiction over the claims asserted in this action other than the Lanham Act claim because such claims are so related to the Lanham Act claim that they form part of the same case or controversy under Article III of the Constitution.

Plaintiff asserts that subject matter jurisdiction is present.

Defendant agrees with Plaintiff's statement as to basis of subject matter jurisdiction.

*iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.*

Plaintiff has asserted the following claims that remain to be tried:

First Claim for Relief: for breach of the non-disparagement provision of § 4(c) of the Select Comfort Corporation Dealer Agreement (First Amended Complaint, Ex. A).

Second Claim for Relief: \* for breach of the first quality merchandise provision of § 4(a) of the Select Comfort Corporation Dealer Agreement (First Amended Complaint, Ex. A).

Third Claim for Relief: \* for fraudulently inducing Sleepy's to enter into the Select Comfort Corporation Dealer Agreement (First Amended Complaint, Ex. A) by falsely representing to Sleepy's that there were no material differences in quality between the line of Select Comfort beds to be sold at Sleepy's and the line of Select Comfort beds being sold at Select Comfort's company-owned retail stores, but promoting the goods sold at its own stores by representing to consumers that they were superior in quality to the goods sold at Sleepy's.

Fourth through Seventh

Claims for Relief each for slander per se based on the particular defamatory statements set forth in each claim, and, with respect to the Seventh Claim for Relief, in Exhibit E to the First Amended Complaint.

Eighth Claim for Relief for breach of the implied covenant of good faith and fair dealing included in the Select Comfort Corporation Dealer Agreement (First Amended Complaint, Ex. A).

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\* The Second and Third Claims for Relief were included in Sleepy's First Amended Complaint dated October 15, 2008. Sleepy's served its Notice of Motion for leave to file its First Amended Complaint on October 15, 2008. Select Comfort opposed that motion. The motion was argued before this Court on March 13, 2009, and remains *sub judice*. Plaintiff disagrees with Defendants' assertion (at p.6, n.2) that it has not conducted discovery on the added claims. Plaintiff submits that Defendants did, in fact, conduct such discovery and had a full opportunity to conduct such discovery as they saw fit. Plaintiff further submits that discovery should not be re-opened, nor is there any reason for the Court not to grant Plaintiff's routine, timely motion to amend the complaint to add claims revealed in discovery.

Ninth Claim for Relief for unfair competition arising from Select Comfort's representations to Sleepy's that Sleepy's was its "retail partner" and that the products supplied to Sleepy's were first quality merchandise with no substantial difference in quality between those products and the products sold by Select Comfort's company-owned retail stores, and Select Comfort's subsequent disparagement of Sleepy's and its products, including the Select comfort beds it sold, and Select Comfort's promotion of its own products by representing to consumers that such products were superior in quality to the Select Comfort beds sold at Sleepy's.

Tenth Claim for Relief for violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by use in commerce of false and misleading descriptions of fact and representations of fact concerning Sleepy's and its products.

Plaintiff has asserted the following claim that is not to be tried:

Eleventh Claim for Relief for contractual indemnification

The Eleventh Claim for Relief was dismissed on Select Comfort's motion pursuant to Fed. R. Civ P. 12(b)(6).

Plaintiff objects to Defendants' statements of defenses that remain to be tried to the extent that such defenses were not asserted in Defendants' Answer.

Defendants' have asserted the following defenses that remain to be tried:<sup>2</sup>

Defenses to Plaintiff's First Claim for Relief For Breach of Non-Disparagement Provision §4(c) of Dealer Agreement:

- a. Select Comfort made no disparaging statements.
- b. Select Comfort made no disparaging statements to any customers.
- c. Select Comfort's allegedly disparaging statements did not cause damage to Sleepy's.
- d. The Dealer Agreement had already expired by its terms and was not renewed or extended at the time of Select Comfort's alleged disparaging statements.
- e. Select Comfort's allegedly disparaging statements did not breach §4(c) of the Dealer Agreement.
- f. Sleepy's prior material breaches of the Dealer Agreement excused Select Comfort's performance under the Dealer Agreement.
- g. Sleepy's claims are barred by the applicable Statute of Frauds.
- h. Sleepy's claims are barred by the doctrines of waiver, estoppel, and laches because Sleepy's was aware of the actions allegedly giving rise to this claim long before it commenced litigation and induced Select Comfort to believing that measures being taken to remedy any alleged issues were adequate.
- i. Sleepy's claims are barred by the doctrine unclean hands because Sleepy's made similar statements about Select Comfort, which it now claims breaches the Dealer Agreement, throughout the course of the parties' contractual relationship.
- j. Select Comfort's allegedly disparaging statements were induced by Sleepy's.
- k. Select Comfort's defense to this claim has been prejudiced by Sleepy's spoliation of evidence.

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<sup>2</sup> In October 2008, Sleepy's moved to file an Amended Complaint adding an additional breach of contract claim and a fraudulent inducement claim. Select Comfort opposed Sleepy's motion. The Court did not grant Sleepy's leave to file the Amended Complaint. As such, Select Comfort did not conduct discovery on the proposed new claims. Therefore, Select Comfort's defenses are directed at the claims in the original complaint, which is the operative Complaint in this action.

Defenses to Plaintiff's Second through Fifth Claims for Relief – Slander *Per Se*:

- a. Select Comfort did not make any slanderous statements about Sleepy's.
- b. Select Comfort's allegedly slanderous statements do not attack Sleepy's business integrity or credit.
- c. Sleepy's claim is an improperly pled claim for product disparagement and fails because Sleepy's has failed to plead and prove malice and special damages as required for a product disparagement claim.
- d. Select Comfort's allegedly slanderous statements did not cause damage to Sleepy's.
- e. Each of Select Comfort's allegedly slanderous statements was solicited and consented to by Sleepy's; therefore, there was no publication.
- f. Select Comfort's allegedly slanderous statements were not published to any third party.
- g. Select Comfort's allegedly slanderous statements are opinion and/or puffery and therefore, not actionable.
- h. Sleepy's claims are barred by the doctrines of waiver, estoppel, and laches because Sleepy's was aware of the actions allegedly giving rise to this claim long before it commenced litigation and induced Select Comfort to believing that measures being taken to remedy any alleged issues were adequate.
- i. Sleepy's claims are barred by the doctrine unclean hands because Sleepy's made similar statements about Select Comfort, to those upon which it now brings claims of Slander *Per Se* against Select Comfort, throughout the course of the parties' relationship.
- j. Select Comfort's defense to this claim has been prejudiced by Sleepy's spoliation of evidence.

Defenses to Plaintiff's Sixth Claim for Relief – Breach of the Implied Covenant of Good Faith and Fair Dealing:

- a. Select Comfort did not engage in actions that breached the implied covenant of good faith and fair dealing.
- b. Select Comfort's allegedly breaching statements did not cause damage to Sleepy's.
- c. The Dealer Agreement had already expired by its terms and was not renewed or extended at the time of Select Comfort's allegedly breaching statements; therefore, any implied covenant has also expired.

- d. Sleepy's claims are barred by the doctrines of waiver, estoppel, and laches because Sleepy's was aware of the actions allegedly giving rise to this claim long before it commenced litigation and induced Select Comfort to believing that measures being taken to remedy any alleged issues were adequate.
- e. Sleepy's claims are barred by the doctrine unclean hands because Sleepy's made similar statements about Select Comfort, to those upon which it now brings claims against Select Comfort, throughout the course of the parties' relationship.
- f. Select Comfort's allegedly breaching statements were induced by Sleepy's.
- g. Select Comfort's defense to this claim has been prejudiced by Sleepy's spoliation of evidence.

Defenses to Plaintiff's Seventh Claim for Relief – Unfair Competition:

- a. Select Comfort did not engage in any actions which constitute unfair competition.
- b. Select Comfort's allegedly unfair actions did not cause damage to Sleepy's.
- c. The Dealer Agreement had already expired by its terms and was not renewed or extended at the time of Select Comfort's allegedly unfair actions; therefore, Sleepy's did not have any property right or benefit to which it is entitled upon which to base an unfair competition claim.
- d. Sleepy's claim is an improperly pled claim for product disparagement and fails because Sleepy's has failed to plead and prove malice and special damages as required for a product disparagement claim.
- e. Sleepy's claims are barred by the doctrines of waiver, estoppel, and laches because Sleepy's was aware of the actions allegedly giving rise to this claim long before it commenced litigation and induced Select Comfort to believing that measures being taken to remedy any alleged issues were adequate.
- f. Sleepy's claims are barred by the doctrine unclean hands because Sleepy's made similar statements about Select Comfort, to those upon which it now brings claims against Select Comfort, throughout the course of the parties' relationship.
- g. Select Comfort's allegedly unfair actions were induced by Sleepy's
- h. Select Comfort's defense to this claim has been prejudiced by Sleepy's spoliation of evidence.

Defenses to Plaintiff's Eighth Claim for Relief – Violation of §43(a) Lanham Act, 15 U.S.C. §1125(a):

- a. Select Comfort's alleged statements were not false and misleading.
- b. Select Comfort's alleged statements were not statements of fact.
- c. Select Comfort's alleged statements were statements of opinion and/or were puffery and not actionable under the Lanham Act.
- d. Select Comfort's allegedly false and misleading statements did not cause damage to Sleepy's.
- e. Select Comfort's allegedly false and misleading statements were not part of an organized campaign.
- f. Select Comfort's allegedly false and misleading statements were not made as a part of a commercial advertising or promotion disseminated to the purchasing public.
- g. There was no widespread dissemination of Select Comfort's allegedly false and misleading statements.
- h. Sleepy's claims are barred by the doctrines of waiver, estoppel, and laches because Sleepy's was aware of the actions allegedly giving rise to this claim long before it commenced litigation and induced Select Comfort to believing that measures being taken to remedy any alleged issues were adequate.
- i. Sleepy's claims are barred by the doctrine unclean hands because Sleepy's made similar statements about Select Comfort, to those upon which it now brings claims against Select Comfort, throughout the course of the parties' relationship.
- j. Select Comfort's allegedly false and misleading statements were induced by Sleepy's.
- k. Select Comfort's defense to this claim has been prejudiced by Sleepy's spoliation of evidence.

Claims and Defenses Previously Asserted Which are Not to be Tried:

Contractual Indemnification.

- a. Sleepy's claim for contractual indemnification was dismissed on Select Comfort's motion pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Court found that the contractual indemnification provision of the Dealer Agreement relates exclusively to third-party claims.

*v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.*

Plaintiff: The case is to be tried without a jury. Plaintiff estimates that the trial will require between ten and sixteen trial days.

Defendants: The case is to be tried without a jury. Defendants estimate that the trial will require fifteen trial days.

*vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).*

The parties have not consented to trial of the case by a magistrate judge.

*vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.*

Use of documents at trial is subject to the Confidentiality Stipulation and Protective Order in this case.

The parties have not stipulated to any agreed facts. The parties have not stipulated to any agreed law.

*viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.*

Plaintiff:

	Name	In person/deposition	Fact/Expert
1.	Abuhillo, Mohammad	Live	Fact
2.	Acker, Harry	By deposition or live	Fact
3.	Arroyo, Jesus	Live	Fact

4.	Bender, Anthony	By deposition or live	Fact
5.	Blank, Adam	By deposition or live	Fact
6.	Bookbinder, Michael	By deposition or live	Fact
7.	Cheshul, Scott	Live	Fact
8.	Cole, Chuck	Live	Fact
9.	Colon, Anthony	Live	Fact
10.	Constantinides, James	By deposition or live	Fact
11.	Corcoran, Mike	Live	Fact
12.	Cramer, Steven	Live	Fact
13.	Dallojacono, Louis	Live	Fact
14.	Davis, Bruce	Live	Fact
15.	Del Vicario, Frank	By deposition or live	Fact
16.	Demma, John	Live	Fact
17.	Desrosiers, Amy	By deposition or live	Fact
18.	Devlin, JD	Live	Fact
19.	Edmunds, Jack	Live	Fact
20.	Eisenman, Paul	Live	Fact
21.	Exline, Dennis	By deposition or live	Fact
22.	Fisher, Jimmy	Live	Fact
23.	Fishman, Ira	By deposition or live	Fact
24.	Gauthier, Richard	Live	Fact
25.	Giacobbe, John	Live	Fact
26.	Gorman, Robert	Live	Fact
27.	Grinnan, Michael	By deposition or live	Fact
28.	Gruman, Jacqueline	Live	Fact
29.	Gruman, William	Live	Fact
30.	Higgins, Thomas	Live	Fact
31.	Jerman, Jeff	Live	Fact
32.	Kapij, Dave	Live	Fact
33.	Kilty, Joseph	By deposition or live	Fact
34.	Lafalce, Dominick	Live	Fact
35.	Mahaffy, Sarah	By deposition or live	Fact
36.	Mahoney, Paul	Live	Fact

37.	Mongillo, Devon	Live	Fact
38.	Morgan, Dayne	Live	Fact
39.	Pagliughi, Tommy	Live	Fact
40.	Paiva, Tyler	By deposition or live	Fact
41.	Pare, Eric	By deposition or live	Fact
42.	Patel, Krunal	By deposition or live	Fact
43.	Peluso, Keith	Live	Fact
44.	Pendergast, Betty	Live	Fact
45.	Perez, Tony	Live	Fact
46.	Petrillo, Jerry	By deposition or live	Fact
47.	Pollicino, Paul	Live	Fact
48.	Puran, Steve	Live	Fact
49.	Reisman, Mark	Live	Fact
50.	Retenski, Sam	Live	Fact
51.	Rhodes, Scott	Live	Fact
52.	Richardson, John	Live	Fact
53.	Riggin, Timothy	By deposition or live	Fact
54.	Ringler, Robert	Live	Fact
55.	Ritter, Mike	Live	Fact
56.	Roitman, Alex	Live	Fact
57.	Rosenberg, Barry	Live	Fact
58.	Ross, Ken	Live	Fact
59.	Sabri, Yusuf	Live	Fact
60.	Sanferraro, Nicholas	Live	Fact
61.	Savoth, Gregory	Live	Fact
62.	Seth, Joseph	Live	Fact
63.	Siminski, Michael	Live	Fact
64.	Sinex, Marilyn	Live	Fact
65.	Thigpen, Dan	Live	Fact
66.	Veach, Larry	Live	Fact
67.	West, Rodney	Live	Fact
68.	Wigfield, Gene	Live	Fact
69.	Wozniack, Matt	By deposition or live	Fact
70.	Zaffron, Deborah	By deposition or live	Fact
71.	Zuzick, Joan	By deposition or live	Fact
72.	Wilner, Benjamin S. PhD.	Live	Expert

Defendant<sup>3</sup>:

	<u>Name</u>	<u>In person/deposition</u>	<u>Fact/Expert</u>
1.	Bruce Bauman	In Person	Fact
2.	Keith Spurgeon	In Person	Fact
3.	Timothy Werner	In Person	Fact
4.	Erik Fair	In Person	Fact
5.	William McLaughlin	In Person	Fact
6.	Dolores Franco	In Person	Fact
7.	Doug Scites	In Person	Fact
8.	Sean Swiderski	In Person	Fact
9.	Harry Acker	In Person	Fact
10.	Anthony Bender	In Person	Fact
11.	Mike Bookbinder	In Person	Fact
12.	Adam Blank	In Person	Fact
13.	Dennis Exline	In Person	Fact
14.	Ira Fishman	In Person	Fact
15.	George Gombossy	In Person	Fact
16.	Steven Schwartz	In Person	Expert

*ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.*

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<sup>3</sup> In accordance with Judge Platt's Individual Practice Rule 3(A)(viii), Defendants have listed witnesses to be used in its case in chief. Defendants reserve the right to amend, change, modify or add witnesses, including, but not limited to, rebuttal witnesses to the proposed list of trial witnesses. Defendants reserve the right to present the witness testimony at trial by live testimony or by deposition as permitted under the Federal Rules of Civil Procedure and the local rules. Defendants reserve the right to call any witnesses identified on Plaintiff's proposed list of trial witnesses.

**Plaintiff's Deposition Designations:<sup>4</sup>**

<b>Bauman, Bruce – May 14, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>	<b>Defendants' Cross-Designations</b>	<b>Defendants' Objections<sup>5</sup> <sup>6</sup></b>
3:25	4:3	Because plaintiff designates much of this transcript, defendants cross designate the remainder, including all objections on the record therein.	
4:6	4:13		
9:8	9:14		
9:18	9:21		
10:2	10:5		
10:15	10:18		
10:22	11:2		
15:24	16:17		
17:15	18:14		
18:18	19:1		
38:4	38:17		
46:19	47:25		
50:4	50:13		
61:1	61:15		
62:10	62:14		
62:17	62:18		
66:3	69:13		No Foundation
70:1	71:3		No Foundation, Relevance

<sup>4</sup> Plaintiff objects to blanket cross-designations of the remainder of the deposition as inconsistent with the Court's individual practices.

<sup>5</sup> Defendants reserve the right to make all objections permitted under the Federal Rules of Evidence.

<sup>6</sup> Plaintiff objects to Defendants' purported reservation of the right to make objections not specified herein in accordance with the Court's individual practices.

71:18	73:8	No Foundation, Relevance
73:11	74:13	No Foundation, Relevance
75:23	76:19	No Foundation, Relevance, Speculation
79:11	79:25	No Foundation
82:4	82:13	No Foundation
82:23	84:13	
90:18	91:6	
91:9	91:13	
93:17	94:12	No Foundation, Speculation
95:4	95:11	No Foundation, Speculation
95:15	95:23	No Foundation, Speculation
100:17	100:24	
106:22	106:25	No Foundation
107:3	107:7	
108:2	110:3	Relevance
110:13	118:17	Relevance
120:1	122:5	Relevance
123:23	125:3	Relevance
125:14	128:12	No Foundation
130:21	134:15	No Foundation
134:25	135:18	No Foundation
135:22	136:9	No Foundation
139:25	146:21	No Foundation
149:14	151:6	No Foundation
151:12	151:15	No Foundation
151:21	153:23	No Foundation
160:23	162:18	No Foundation
168:14	171:8	No Foundation
171:14	172:1	No Foundation
173:10	175:10	No Foundation
189:7	189:17	
196:12	196:14	
196:19	197:13	

198:25	199:2		
199:8	199:14		Relevance
200:1	201:9		Relevance
203:19	204:17		Relevance, Speculation
204:25	205:12		Relevance, Speculation
209:7	209:21		
210:6	214:9		Relevance
<b>Bender, Anthony – June 15, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>		
5:6	5:8		
10:25	11:8		
11:16	11:24		
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27:7	27:25		
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<b>Constantinides, James – May 28, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>		
4:9	4:11	6:4-7:3	
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57:14	58:10		
58:15	58:25		Speculation
59:2	59:25	60:2-63:21	Speculation
66:21	67:3		
68:25	72:7		Speculation, Hearsay, No Foundation
74:13	75:19	75:20-77:16	
77:17	77:22	77:23-79:19	

93:15	96:14	82:18-86:7; 90:4-23; 92:17-14; 96:23-98:7; 99:1-104:25; 132:11-20	
98:8	98:25		
<b>Del Vicario, Frank – July 15, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>		
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24:20	26:5	26:6-26:14	
27:4	27:8	27:9-14	
28:7	28:25		
29:8	29:15		Hearsay
29:21	30:22		Hearsay
31:7	31:24		Hearsay
32:5	32:25		Hearsay
34:7	34:21	34:22-36:1; 36:25-37:10	Hearsay
38:25	39:11	38:7-11; 39:12-19	Hearsay
39:20	41:1	41:2-44:21	Hearsay
44:4	45:19	45:20-47:2; 49:25-53:5; 55:24-56:14; 58:9-59:1; 60:21-63:18; 64:5-13; 65:5-20; 66:3-7; 69:6-15; 69:23-70:5	Hearsay
74:2	74:4		
74:11	75:3		Hearsay
75:10	76:17		Hearsay
<b>Desrosiers, Amy – July 8, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>		
4:9	4:15		
9:15	10:23		
11:12	12:19		
13:6	26:7		Hearsay
26:10	30:22	30:23-31:6	Hearsay
31:16	39:7	39:8-46:14	Hearsay
48:3	49:18		Hearsay

50:13	59:2	59:3-16	Hearsay
61:16	62:17	62:18-25	
63:20	64:8	64:9-25	
65:9	65:15		
68:8	68:25	69:1-8	Hearsay
69:9	69:15		Hearsay
69:24	71:6	71:7-8	No Foundation, Relevance, Speculation
71:9	71:24		No Foundation, Relevance, Speculation

**Fair, Eric – May 13, 2009**

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7:15	7:19		
8:18	9:1		
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15:11	15:25		
112:5	112:12	113:17-23; 118:15-25; 120:4- 23; 101:5-18	No Foundation, Speculation
121:24	123:10		
124:15	124:19	38:4-39:6; 73:10- 17; 79:11-20; 124:20-126:16	No Foundation, Speculation
129:21	130:15		
140:17	141:4		
141:11	142:4	142:9-20	No Foundation; Hearsay
167:20	168:5		
176:6	176:18		
177:20	180:2	180:3-182:7	
182:8	182:20	183:3-16	Speculation
183:16	185:2		Speculation
211:3	211:11		No Foundation
224:20	225:24		No Foundation
226:4	226:13	226:14-10	No Foundation
227:11	227:23		
228:13	228:23		
244:20	244:24		No Foundation

262:20	263:6	263:7-14	No Foundation
264:23	265:2		
265:23	268:5		
275:18	275:21	275:18-24	
278:17	280:2	280:3-8	
280:9	280:18		Speculation
280:24	281:4	281:5-282:3	
<b>Franco, Dolores – July 2, 2009</b>			
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>		
6:2	6:4		
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24:23	26:3		
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43:16	44:25	42:23-43:15; 45:1-9	
49:12	49:22	47:16-48:10; 49:23-50:23	
58:21	59:9		No Foundation
63:8	63:23	63:24-64:11	No Foundation
64:15	66:2		No Foundation; Speculation
66:15	67:8	67:9-17	No Foundation; Speculation
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**Defendants' Deposition Designations<sup>7</sup> <sup>8</sup>:**

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<sup>7</sup> In accordance with Judge Platt's Individual Practice Rule 3(A)(ix), Defendants made the following designations of deposition testimony to be used in its case in chief. Defendants reserve the right to amend, change, modify or add deposition testimony, including, but not limited to, rebuttal deposition testimony to the proposed deposition testimony. Defendants make the above-listed designations in the event that any of the indicated witnesses is unavailable within the meaning of Rule 32(a)(4) of the Federal Rules of Civil Procedure. Defendants reserve the right to seek leave to designate deposition testimony of any additional witness who is currently expected to be available to testify at trial in the event that the witness becomes unavailable. In addition, defendants may deposition testimony for any other purpose permitted under the applicable rules; for example, defendants may use the designated excerpts of plaintiff's deposition transcripts as depositions of party-opponents within the meaning of Rule 32(a)(3) of the Federal Rules of Civil Procedure. Further, defendants reserve the right to use any deposition transcript, whether or not listed above, for purposes of impeachment or rebuttal to the extent permitted under the applicable rules. Defendants reserve the right to make objections or additional designations in response to Plaintiff's cross designations. Defendants reserve the right to rely on any designations identified on Plaintiff's proposed list of deposition testimony.

<sup>8</sup> Plaintiff objects to Defendants' purported reservation of rights to the extent that it exceeds what is permitted by this Court's individual practices.

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221:21	224:13
235:6	236:11
237:22	238:14
243:13	245:4
249:4	253:5
<b>Franco, Dolores – July 2, 2009</b>	
<b>Starting Page: Line</b>	
133:25	134:3
135:11	135:18
162:25	163:8
190:21	191:25
<b>Kilty, Joseph – May 27, 2009</b>	
<b>Starting Page: Line</b>	
76:4	76:25
77:6	81:6
81:16	90:5
90:9	93:12
<b>McLaughlin, Bill – July 1, 2009</b>	
<b>Starting Page: Line</b>	
20:8	20:16
25:6	24:7
25:9	25:16
36:7	36:14
36:16	37:6
131:25	133:7
133:15	133:15
<b>Paiva, Tyler – May 28, 2009</b>	
<b>Starting Page: Line</b>	
82:5	83:24
86:11	87:6
89:17	92:23
96:25	97:11
176:9	181:11
185:21	190:5
<b>Patel, Krunal R. – July 15, 2009</b>	
<b>Starting Page: Line</b>	
26:10	27:7
32:10	32:13
<b>Petrillo, Gerald John – May 27, 2009</b>	
<b>Starting Page: Line</b>	
46:3	46:5

50:13	51:3
55:2	55:25
64:20	66:2
69:20	69:24
71:16	72:4
72:12	72:20
75:13	76:2
79:8	80:17
81:7	81:23
<b>Riggin, Timothy – July 14, 2009</b>	
<b>Starting Page: Line</b>	
52:10	52:18
<b>Scites, Doug – June 24, 2009</b>	
<b>Starting Page: Line</b>	
23:6	23:22
33:18	33:25
35:12	35:16
36:3	39:9
44:10	52:24
55:5	66:25
67:11	72:8
73:3	75:13
75:19	82:9
87:19	88:5
88:19	89:6
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100:21	102:12
102:24	104:5
110:20	113:9
114:7	116:12
120:9	122:23
124:17	124:23
126:20	127:3
128:14	128:17
128:20	129:15
128:20	129:15
130:22	132:17
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155:15	156:1
156:3	156:7
158:5	158:13
177:25	181:14

186:15	187:10
203:4	203:24
204:3	204:4
204:8	204:12
208:18	209:19
213:5	213:9
216:5	217:24
225:16	225:22
250:11	253:12
<b>Spurgeon, Keith – May 12, 2009</b>	
Starting Page: Line	Ending Page: Line
10:9	10:18
80:12	80:18
80:21	81:9
127:13	127:17
128:12	128:15
163:13	164:3
189:12	189:18
192:1	192:4
192:8	192:19
241:25	242:24
243:19	244:2
246:16	246:19
246:22	246:23
249:14	250:17
254:3	254:21
258:10	261:2
277:2	277:25
290:12	291:6
<b>Swiderski, Sean – June 4, 2009</b>	
Starting Page: Line	Ending Page: Line
35:19	37:10
54:24	61:21
88:20	91:16
92:5	92:20
95:22	96:3
111:25	112:9
122:8	123:12
156:19	158:15
167:13	169:11
169:20	170:13
178:22	179:12
182:11	184:10

188:13	188:25
190:22	193:14
194:10	195:20
201:15	204:3
220:21	221:25
224:11	225:4
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290:11	291:13
296:17	296:25
300:6	301:8
320:17	323:11
355:12	356:3
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359:10	359:18
377:11	378:3
379:4	385:22
387:24	389:3
391:6	391:12
<b>Timothy Werner – May 15, 2009</b>	
Starting Page: Line	Ending Page: Line
13:24	14:5
15:19	16:3
32:14	32:23
36:15	37:7
38:22	40:12
41:20	41:22
43:9	43:15
50:17	51:20
67:18	68:7
87:3	87:17
123:4	124:16
133:10	133:14
134:8	135:7
151:24	152:9
162:16	162:18
175:19	175:25
176:13	176:25
177:12	177:19
178:6	178:20
182:17	184:1
186:2	186:14
188:5	189:7
207:19	208:9

223:10	223:17
232:2	234:5
<b>Benjamin S. Wilner, Ph. D. – July 13, 2009</b>	
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>
10:23	11:23
12:4	14:17
15:20	16:23
19:18	20:2
29:5	29:14
33:20	34:9
59:9	59:21
59:25	60:6
64:23	65:19
69:20	70:19
71:12	71:18
80:6	80:15
84:5	85:12
86:9	89:4
91:19	92:16
94:16	95:13
101:19	102:17
<b>Zuzick, Joan – July 14, 2009</b>	
<b>Starting Page: Line</b>	<b>Ending Page: Line</b>
25:17	25:22
26:16	27:9
27:15	28:19

*x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.*

### **PLAINTIFF'S EXHIBITS<sup>9</sup>**

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<sup>9</sup> Plaintiff requests the right to supplement this list with any documents designated by Defendants. Plaintiff expects to use blow-ups of trial exhibits, or combinations of trial exhibits, as visual aids for the Court.

<b>Bates Number</b>	<b>Description</b>	<b>No Objection on Authenticity (*) or No Objection on Any Ground (**)</b>
NS00011-NS00012	(National Shop Report, dated 12/13/07 at Roosevelt Field Mall)	
NS00013-NS00014	(National Shop Report, dated 12/02/06 at Chico Mall, Chico, CA)	
NS00015-NS00016	(National Shop Report, dated 1/17/07 at Chico Mall, Chico, CA)	
NS00017-NS00018	(National Shop Report, dated 7/10/07 at Chico Mall, Chico, CA)	
NS00019-NS00020	(National Shop Report, dated 12/03/06 at Chico Mall, Chico, CA)	
NS00021-NS00022	(National Shop Report, dated 1/16/07 at Enfield Mall, Enfield CT)	
NS00023	(National Shop Report, dated 1/18/07 at Enfield Mall, Enfield CT)	
NS00024-NS00025	(National Shop Report, dated 12/04/06 at Galleria, Houston, TX)	
NS00026-NS00027	(National Shop Report, dated 1/20/07 at Galleria, Houston, TX)	
NS00028	(National Shop Report, dated 6/28/07 at Galleria, Houston, TX)	
NS00029-NS00030	(National Shop Report, dated 12/04/06 at The Shoppes at Buckland Hills, Manchester, CT)	
NS00031-NS00032	(National Shop Report, dated 1/19/07 at The Shoppes at Buckland Hills, Manchester, CT)	
NS00033-NS00034	(National Shop Report, dated 12/01/06 at Memorial City Mall, Houston, TX)	
NS00035-NS00036	(National Shop Report, dated 1/18/07 at Memorial City Mall, Houston, TX)	
NS00037-NS00038	(National Shop Report, dated 6/28/07 at Memorial City Mall, Houston, TX)	
NS00039-NS00040	(National Shop Report, dated 12/22/07 at Memorial City Mall, Houston, TX)	
NS00041-NS00042	(National Shop Report, dated 12/01/06 at Vintage Faire Mall, Modesto, CA)	
NS00043	(National Shop Report, dated 1/17/06 at Vintage Faire Mall, Modesto, CA)	
NS00044-NS00045	(National Shop Report, dated 6/28/07 at Vintage Faire Mall, Modesto, CA)	
NS00046-NS00047	(National Shop Report, dated 12/13/07 at Vintage Faire Mall, Modesto, CA)	
NS00048-NS00049	(National Shop Report, dated 12/06/06 at Natick Mall, Natick, MA)	

NS00050-NS00051	(National Shop Report, dated 1/19/07 at Natick Mall, Natick, MA)	
NS00052-NS00053	(National Shop Report, dated 12/01/06 at River Oaks Shopping Center, Houston, TX)	
NS00054-NS00055	(National Shop Report, dated 1/19/07 at River Oaks Shopping Center, Houston, TX)	
NS00056-NS00057	(National Shop Report, dated 12/03/06 at Galleria at Roseville, Roseville, CA)	
NS00058-NS00059	(National Shop Report, dated 1/17/07 at Galleria at Roseville, Roseville, CA)	
NS00060-NS00061	(National Shop Report, dated 06/26/07 at Galleria at Roseville, Roseville, CA)	
NS00062	(National Shop Report, dated 12/04/06 at Arden Fair Mall, Sacramento, CA)	
NS00063-NS00064	(National Shop Report, dated 1/18/07 at Arden Fair Mall, Sacramento, CA)	
NS00065-NS00066	(National Shop Report, dated 6/27/07 at Arden Fair Mall, Sacramento, CA)	
NS00067-NS00068	(National Shop Report, dated 12/04/06 at Willowbrook Mall, Houston, TX)	
NS00069-NS00070	(National Shop Report, dated 1/18/07 at Willowbrook Mall, Houston, TX)	
NS00071	(National Shop Report, dated 1/18/07 at Willowbrook Mall, Houston, TX)	
NS00072-NS00073	(National Shop Report, dated 7/09/07 at Willowbrook Mall, Houston, TX)	
NS00074	(National Shop Report Form)	
SLCO0000599	Select Comfort Employee Acknowledgement and Consent Form for Sean Barrett, dated March 30, 2006)	
SLCO0001671- SLCO0001673	(Sleepy's Program Re-evaluation)	
SLCO0002637- SLCO0002651	(Retail Partner Program v. 2, dated August 3, 2004 Powerpoint Presentation)	
SLCO0002652- SLCO0002667	(Retail Partner Program v. 4, dated 8/04/04 Powerpoint Presentation)	
SLCO0002668- SLCO0002674	(Retail Partner Program, dated July 21, 2004 Powerpoint Presentation)	
SLCO0002675- SLCO0002679	(Program and Product Comparisons - SC Retail to Retail Partner Program)	
SLCO0002730- SLCO0002748	(Personal Preference Product Manual)	(**)
SLCO0002764- SLCO0002833	(Brand Marketing Communications Standards Manual - Guidelines For a Consistent Communications Strategy, Last Updated 8/03/07 HS-PL)	

SLCO0002834- SLCO0002879	(Select Comfort Retail Partners Communications Standards Manual - Guidelines for Consistent Communications Strategy, 10/15/05 AK)	(**)
SLCO0003130- SLCO0003150	(RP Strategy Discussion Document, dated April 27, 2007 Powerpoint Presentation)	
SLCO0003594- SLCO0003604	(Select Comfort Shop Report Questionnaire and Instructions)	
SLCO0004576- SLCO0004578	(Retail Partner December Business Review, dated January 10, 2006 Powerpoint Presentation)	(**)
SLCO0004812	("Impact to Retail/Retail Partners Based on Action Steps" Chart)	
SLCO0005539- SLCO0005541	(SFIE Q2 2007 Questions for Keith Spurgeon)	
SLCO0005542- SLCO0005545	(Questions for Keith Spurgeon, SFIE Q2 2007)	
SLCO0005556- SLCO0005557	(May 8, 2006 email from Tim Werner to various Select Comfort employees re: Retail Partner Results)	(**)
SLCO0005561	(June 8, 2006 email from Tim Werner to various Select Comfort employees re: Retail Partner Results)	(**)
SLCO0005484	(Chart re: Guide to Sleep Number Beds)	(**)
SLCO0006361- SLCO0006362	(June 21, 2007 email from Bruce Bauman to Jim Raabe re: Core Line Test in Retail Partners - Key Decisions)	
SLCO0006436- SLCO0006480	(Select Comfort Training - Powerpoint Presentation)	(**)
SLCO0006529	(August 1, 2006 email from Bruce Bauman to Mike Bookbinder, ccng Ira Fishman and Keith Spurgeon re: Review Program Performance & Strategies)	(**)
SLCO0006633- SLCO0006644	(Select Comfort Corporation form Dealer Agreement)	(**)
SLCO0006767	(January 11, 2007 letter from Keith Spurgeon to Harry Acker)	(**)
SLCO0006774- SLCO0006775	(January 8, 2007 email from Bruce Bauman to Bill McLaughlin and Keith Spurgeon re: Sleepy's)	(**)
SLCO0006791- SLCO0006801	(Sleepy's Business Review, dated January 3, 2007 Powerpoint Presentation)	
SLCO0006816- SLCO0006817	(November 7, 2006 email from Mike Bookbinder to Erik Fair, ccng Keith Spurgeon and Bruce Bauman re: Very Important)	(**)

SLCO0006954- SLCO0006960	(September 6, 2006 email from Bruce Bauman to Mike Bookbinder, ccng Ira Fishman and Keith Spurgeon re: Postponing Thursday's Meeting)	(**)
SLCO0007055- SLCO0007099	(Select Comfort Training - Powerpoint Presentation)	
SLCO0007193	(January 22, 2007 email from Sean Swiderski to RP Trainer Update re: 20072101 Sleepys Sean)	(**)
SLCO0007203	(August 7, 2006 email from Sean Swiderski to RP Trainer Update re: Sleepys for the week of 8/5)	(**)
SLCO0007204	(July 24, 2006 email from Sean Swiderski to RP Trainer Update re: Sleepys update week of 7/22)	(**)
SLCO0007216- SLCO0007232	(RP Strategy, dated July 17, 2007 Powerpoint Presentation)	
SLCO0007286- SLCO0007287	(Summarizing increase in Retail Prices for Retail Partners)	
SLCO0007339- SLCO0007348	(Retail Partners Core Product Test - Core Model Selection Powerpoint Presentation)	
SLCO0007349- SLCO0007359	(Retail Partner Strategy Assessment, July 20, 2007 Powerpoint Presentation)	
SLCO0007827	(September 14, 2007 email from Bruce Bauman to Erik Fair re: Secret Shop Result Report)	
SLCO0007938- SLCO0007940	(Retail Partner Program Overview)	
SLCO0008845- SLCO0008856	(Select Comfort Corporation draft Dealer Agreement for Better Bedding Shops)	
SLCO0009413- SLCO0009414	(June 12, 2006 email from Ira Fishman to Bruce Bauman, ccng Mike Bookbinder and Sean Swiderski re: Select Comfort Garden State Plaza Mall)	(**)
SLCO0009466- SLCO0009467	(May 31, 2006 email from Sean Swiderski to Bruce Bauman re: PO#0528695SKNE)	(**)
SLCO0009535- SLCO0009543	(Consumer Channel March Business Review, dated April 18, 2006 Powerpoint Presentation)	
SLCO0009952- SLCO0009953	(Select Comfort First Quarter 2006 Business Update)	(**)
SLCO0010084- SLCO0010099	(2006 Retail Partner Plan, January 2006 Powerpoint Presentation)	(**)
SLCO0010361- SLCO0010364	(October 26, 2006 email from Bruce Bauman to Dolores Franco, Keith Spurgeon re: Market Performance San Diego - and Sleep Train)	(**)

SLCO0010373-SLCO0010374	(October 25, 2006 email from Bruce Bauman to Larry Cronkhite re: Sleep Train Shopping Review)	(**)
SLCO0010937-SLCO0010939	(New York Market Meeting 8/02/05)	(**)
SLCO0011371-SLCO0011498	(Sleep Number U.S. Market Tracking Study, dated October 2007)	
SLCO0011657-SLCO0011692	(Select Comfort/Sleepy's draft Powerpoint presentation)	(**)
SLCO0011819-SLCO0011820	(November 20, 2006 email from James Mele to RP Trainer Update re: Sleepy's Weekly Update NYC)	(**)
SLCO0011825-SLCO0011826	(December 17, 2006 email from James Mele to RP Trainer Update re: Sleepy's Weekly Update NYC/Conn w-e 12/16)	(**)
SLCO0011827-SLCO0011828	(December 4, 2006 email from James Mele to RP Trainer Update re: Sleepy's Weekly Update NYC/Conn w-e 12/2)	(**)
SLCO0011829-SLCO0011830	(December 31, 2006 email from James Mele to RP Trainer Update re: Sleepy's Weekly Update NYC/Conn w-e 12/30)	(**)
SLCO0011833-SLCO0011834	(November 27, 2006 email from James Mele to RP Trainer Update re: Sleepy's Weekly Update NYC)	(**)
SLCO0011929-SLCO0011943	(Select Comfort Initial Training Certification Quiz & Answers - Powerpoint Presentation)	
SLCO0012386-SLCO0012407	(Retail Partner Exit Plan, dated October 9, 2007)	
SLCO0012603	(March 3, 2008 email from Brooks Goldade to Erik Fair re: Personal Preference "Refresh" Thoughts)	
SLCO0012604-SLCO0012606	(February 18, 2008 email from Doug Scites to Erik Fair, ccng Benn Schuhbauer and Brooks Goldade re: Retail Partners Core Launch Recap Notes)	
SLCO0013866-SLCO0013935	(Brand Marketing Communications Standards Manual - Guidelines for Consistent Communications Strategy, last updated 5/01/07AK)	
SLCO0014097-SLCO0014120	(RP Strategy, dated May 16, 2007 Powerpoint Presentation)	
SLCO0014336-SLCO0014337	(March 1, 2007 email from Amy Wells to TJ Hawthorne and Erik Fair, ccng Timothy Riley and Holly OHanlon re: Wood Foundation)	
SLCO0014754	(Excel charts reflecting cross-over for Retail Partner Buyers)	

SLCO0015413-SLCO0015558	(Select Comfort - Third Discussion, dated June 26, 2006, by The Boston Consulting Group)	
SLCO0015578-SLCO0015579	(August 23, 2006 email from Bruce Bauman to Dolores Franco re: Jordan's Cross-Over Updated)	
SLCO0015580-SLCO0015581	(August 23, 2006 email from Bruce Bauman to Dolores Franco, ccng Keith Spurgeon and Gary Barnes re: Jordan's Cannibalization Analysis)	
SLCO0015590	(Spreadsheet re: "Cross-Over For Jordan's By Select Comfort Store)	
SLCO0015618-SLCO0015632	(Operating Review, January 2006 Powerpoint Presentation)	
SLCO0016895-SLCO0016896	(January 23, 2007 email from Mike Bookbinder to Bill McLaughlin re: Sleepy's)	(**)
SLCO0016907	(January 8, 2007 email from Mike Bookbinder to Bill McLaughlin re: Sleepy's)	(**)
SLCO0016981-SLCO0017050	(Brand Marketing Communications Standards Manual - Guidelines for Consistent Communications Strategy, last updated 7/24/07 HS-PL)	
SLCO0017413-SLCO0017475	(Guidelines for Consistent Communications Strategy)	
SLCO0018617-SLCO0018618	(September 9, 2005 email from David Austad to Dan Koughan, ccng various Select Comfort employees re: Wood Quality With IBC and L&P)	(**)
SLCO0018716-SLCO0018717	(March 13, 2004 email from Darrell Olson to Tim Werner re: Customer Issue)	
SLCO0018877-SLCO0018878	(March 6, 2006 email from Ira Fishman to Tim Werner and Mike Bookbinder re: For Your Information)	
SLCO0019054-SLCO0019058	(List of Questions and Responses for Sleepy's Mattress Professionals, prepared by Select Comfort)	
SLCO0019076	(November 21, 2005 email from Ira Fishman to Tim Werner re: cancellation of sale)	
SLCO0019197-SLCO0019198	(October 6, 2005 email from Sean Swiderski to Tim Werner re: Sleepy's DM Meeting)	(**)
SLCO0019872-SLCO0019881	(Foundation Opportunities - Rationale for Prioritization of Foundation Projects, dated 11/16/06 Powerpoint Presentation)	
SLCO0021185-SLCO0021194	(Foundation Opportunities - Rationale for Prioritization of Foundation Projects, dated 11/14/06 Powerpoint Presentation)	

SLCO0021259	(Overview of Gen 3.1 & Calcium Carbonate)	
SLCO0021273-SLCO0021285	(Gen 3.1 Foundation Update Launch: March 2007 Powerpoint Presentation)	
SLCO0021301-SLCO0021302	(February 15, 2007 email from Chad Gundelach to various Select Comfort employees re: Gen 3 and 31 Comparison)	
SLCO0021303-SLCO0021330	(Select Comfort Comparison of Gen 3 and Gen 3.1 Queen Assemblies)	
SLCO0063985-SLCO0063990	(Gen3 Foundation vs. Boxspring Comparison Report, Revision: A)	(**)
SLCO0063991-SLCO0064059	(Select Comfort Understanding Consumer Perception on A Variety of Foundations, dated June 28, 2006)	
SLCO0064060-SLCO0064074	(Foundation Products Update, dated 7/19/06)	
SLCO0064088-SLCO0064097	(Various pictures of warped/moisture damaged/unacceptable wood)	
SLCO0064238-SLCO0064261	(Sleep Number Bed Brochure)	
SLCO0064314-SLCO0064332	(Sleep Number Bed Brochure)	(**)
SLCO0064339-SLCO0064354	(Select Comfort Sleep Number Brochure)	
SLCO0064357-SLCO0064372	(Sleep Number Bed Brochure)	
SLCO0064375-SLCO0064378	(Sleep Number Bed Brochure)	
SLCO0064383	(Summary of Pending Litigation, dated December 9, 2008)	
SLCO0064386	(Summary of Pending Litigation, dated April 29, 2009)	
SLCO0064386	(Select Comfort University DVD Sales Retention)	
SLCO0064387	(Select Comfort University DVD Accessory Idol)	
SLCO0064403-SLCO0064428	(Selling By Numbers Managers Guide)	
SLCO0064404	(Select Comfort University DVD Initial Training - Slumberland Version)	
SLCO0064407	(Select Comfort University DVD Ro's Message, TV Spots, Right Now Opp. Zone)	
SLCO0064504-SLCO0064528	(Select Comfort Product Training 2006 - Video Workbook, Leaders-Guide)	
SLCO0064529-SLCO0064559	(Sleep Number Beds Product Manual)	

SPE0280-SPE0321	(2007 Mattress Industry - Industry Report of Sales and Trends)	(**)
SPE0322-SPE0331	(2008-2010 Mattress Industry U.S. Market Forecast)	
SP000001	(Shop report by Sarah Mahaffy, dated 3/09/07 at Meriden Square mall, Meriden, CT)	
SP000008-SP000009	(Shop report by Steven Cramer, dated 3/30/07 at The Home Show in the Valley Forge Convention Center)	
SP000019	(Shop report by Scott Rhodes, dated 4/06/07 at Enfield Mall, Enfield, CT)	
SP000069-SP000075	(September 6, 2006 email chain from Mike Bookbinder to Bruce Bauman, cc'ing Ira Fishman re: Postponing Thursday's Meeting)	(**)
SP000076	(Shop report by Sarah Mahaffy, dated 3/06/07 at West Farms Mall, Farmington, CT)	
SP000114-SP000116	(Shop report by John DeLeo, dated 4/17/07 at West Farms Mall, Farmington, CT)	
SP000121	(Shop report by Sarah Mahaffy, dated 3/09/07 at West Farms Mall, Farmington, CT)	
SP000224-SP000233	(Sleepy's Business Review, dated January 3, 2007 - Powerpoint Presentation)	
SP000250-SP000251	(Shop report by Lou Dallojacono, dated 11/08/06 at Trump Plaza, New York, NY)	
SP000257	(Shop report by Anthony Bender, dated 11/07/06 at Smith Haven Mall, Lake Grove, NY)	
SP000276	(Shop report by Scott Cheshul, dated 11/07/06 at Garden State Plaza, Paramus, NJ)	
SP000276	(Shop report by Scott Cheshul, dated 11/07/06 at Rockaway Mall, Rockaway, NJ)	
SP000297-SP000298	(Shop report by Deborah Zaffron, dated 11/05/06 at Bay Shore Mall)	
SP000304-SP000305	(Shop report by Christine Fariello, dated 6/21/07 at Smith Haven Mall, Lake Grove, NY)	
SP000305-SP000306	(Shop report by Victor Plummer, dated 6/22/07 at Queens Center Mall, Elmhurst, NY)	
SP000307-SP000308	(Shop report by Mike Corcoran, dated 6/22/07 at Oxford Valley Mall, Langhorne, PA)	

SP000309-SP000310	(Shop report by MCK17 at Moorestown Mall)	
SP000310-SP000311	(Shop report by Jack Edmunds, dated 6/22/07 at Meriden Mall, Meriden, CT)	
SP000312-SP000313	(Shop report by Stephanie Colletti, dated 6/24/07 at Lehigh Valley Mall)	
SP000330	(Shop report by Dave Kapij, dated 11/08/06 at Enfield Mall, Enfield, CT)	
SP000330	(Shop report by Dave Kapij, dated 11/20/06 in Holyoke, MA)	
SP000337	(Shop report by Michael Siminski, dated 11/07/06 at King of Prussia Mall)	
SP000347-SP000349	(Shop report by Deborah Zaffron, dated 11/05/06 at Bay Shore Mall)	
SP000365	(Shop report by Anthony Colon, dated 9/04/06 at Select Comfort Broadway store, New York, NY)	
SP000418	(Shop report by Dean Weinstein, dated 11/30/06 at Natick Mall, Natick, MA)	
SP000421	(Shop report by Tony Perez, dated 11/08/06 at Palisades Center Mall, Nyack, NY)	
SP000425	(Shop report by Jeff Jerman, dated 11/19/06 at Pheasant Lane Mall, Nashua, NH)	
SP000430	(Shop report by Yusuf Sabri, dated 11/08/06 at Promenade Shops at Saucon Valley, Central Valley, PA)	
SP000435	(Shop report by Paul Mahoney, dated 11/08/06 at Raceway Mall, Freehold, NJ)	
SP000448	(Shop report by Robert Ringler, dated 11/10/06 at Shore Plaza, Braintree, MA)	
SP000458	(Shop report by Mike Ritter, dated 11/08/06 at Staten Island Mall, Staten Island, NY)	
SP000476	(Shop report by Bob Gorman, dated 11/08/06 at Walt Whitman Mall)	
SP000489	(Shop report by Paul Pollicino, dated 11/08/06 at Woodbridge Center, Woodbridge, NJ)	
SP000497-SP000498	(Shop report by Jim Cockroft, dated 4/06/07 at Shore Plaza, Braintree, MA)	
SP000635	(Shop report by Mark J-47, dated 11/07/06 at Monmouth Mall, Eatontown, NJ)	
SP000637	(Shop report by Mike Corcoran, dated 11/08/06 at Willowgrove park Mall, Willowgrove, PA)	

SP000638	(Shop report by John Richardson, dated 11/08/06 at Emerald Square Mall, South Attleboro, MA)	
SP000639	(Shop report by Paul Eisenman, dated 11/07/06 at Trumbull Shopping Park, Trumbull, CT)	
SP000640	(Shop report by Bruce Davis, dated 11/09/06 at Roosevelt Field Mall)	
SP000641	(Shop report by Michael Grinnan, dated 11/08/06 at Deptford Mall, Deptford, NJ)	
SP000645	(Shop report by Jim Cockcroft, dated 3/23/07 at Braintree Mall, Braintree, MA)	
SP000647	(Shop report by Scott Rhodes, dated 3/23/07 at Holyoke Mall, Holyoke, MA)	
SP000649-SP000650	(Shop report by Emery Legere, dated 3/22/07 at Westfield Shopping Mall, Meriden, CT)	
SP000651	(Shop report by dmp32, dated 3/24/07 at Oxford Valley Mall, Langhorne, PA)	
SP000652	(Shop report by Nasir Little, dated 3/22/07 at Rockaway Town Square)	
SP000653-SP000655	(Shop report at Roosevelt Field Mall)	
SP000656	(Shop report by Marilyn Sinex, dated 3/23/07 at The Shops at Saucon Valley, Central Valley, PA)	
SP000657	(Shop report by Barry Rosenberg, dated 3/22/07 at Ocean County Mall, Toms River, NJ)	
SP000661	(Shop report by John Sammartino, dated 3/23/07 at SC Home Show)	
SP000662-SP000663	(Shop report by Anthony Colon, dated 9/04/06 at Select Comfort Store on Broadway, New York, NY)	
SP000666-SP000673	(September 6, 2006 email chain from Mike Bookbinder to Ira Fishman re: Postponing Thursday's Meeting)	(**)
SP000677	(Shop report by Deborah Zaffron, dated 01/13/07 at Roosevelt Field Mall)	
SP000799	(Shop report by Larry Veach, dated 1/09/07 at Bridgewater Commons Mall)	
SP000800-SP000801	(Shop report by Mohammad Abuhillo, dated 1/10/07 at Franklin Mills Mall, Philadelphia, PA)	
SP000801	(Shop report by Jack Edmunds, dated 1/10/07 at The Shops at Buckland Hills)	
SP000801-SP000802	(Shop report by Jack Edmunds, dated 1/10/07 at West Farms Mall, Farmington, CT)	

SP000802-SP000803	(Shop report by Jack Edmunds, dated 1/10/07 at Meriden Square Mall, Meriden, CT)	
SP000803-SP000804	(Shop report by Marilyn Sinex, dated 1/10/07 at Lehigh Valley Mall)	
SP000804-SP000805	(Shop report by Bob Gorman, dated 1/10/07 at Bay Shore Mall)	
SP000805-SP000816	(Shop report by Anthony Colon, dated 1/11/07 at the Select Comfort Store on Broadway and 72nd, New York, NY)	
SP000816-SP000820	(Shop report by Jim Constantinides, dated 1/12/07 at the Queens Center Mall)	
SP000820-SP000821	(Shop report by Marilyn Sinex, dated 1/12/07 at The Shops at Saucon Valley, Central Valley, PA)	
SP000821-SP000823	(Shop report by Joseph Kilty, dated 1/12/07 at The Shoppes at Buckland Hills, Manchester, CT)	
SP000823	(Shop report by Tommy Pagliughi, dated 1/12/07 at Menlo Park Mall, Menlo Park, NJ)	
SP000823-SP000825	(Shop report by Paul Pollicino, dated 1/12/07 at Select Comfort store in East Brunswick, NJ)	
SP000825	(Shop report by Jesus Arroyo, dated 1/12/07 at Palisades Center Mall, West Nyack, NY)	
SP000825-SP000826	(Shop report by Chuck Cole, dated 1/12/07 at Newport Mall, Jersey City, NJ)	
SP000826-SP000827	(Shop report by Chuck Cole, dated 1/12/07 at Jersey Gardens Mall, Elizabeth, NJ)	
SP000827-SP000828	(Shop report by Thomas Higgins, dated 1/12/07 at Garden State Plaza, Paramus, NJ)	
SP000828	(Shop report by Deborah Zaffron, dated 1/13/07)	
SP000828-SP000829	(Shop report by William Gruman, dated 1/13/07 at Steam Town Mall, Scranton, PA)	
SP000829-SP000830	(Shop report by Dominick Lafalce, dated 1/14/07 at Monmouth Mall, Eatontown, NJ)	
SP000830-SP000831	(Shop report by Steven Cramer, dated 1/14/07 at King of Prussia Mall)	
SP000831-SP000832	(Shop report by Richard Gauthier, dated 1/14/07 at Park City Mall)	
SP000832-SP000834	(Shop report by Tyler Paiva, dated 1/14/07 at Jefferson Valley Mall, Yorktown Heights, NY)	

SP000835-SP000836	(Shop report by Gregory Savoth, dated 1/14/07 at Ocean County Mall, Ocean County, NJ)	
SP000836-SP000837	(Shop report by Dayne Morgan, dated 1/15/07 at Willowgrove Mall, Willowgrove, PA)	
SP000837-SP000838	(Shop report by Paul Eisenman, dated 1/15/07 at Danbury Fair Mall)	
SP000838, SP000840	(Shop report by Tony Perez, dated 1/15/07 at Poughkeepsie Galleria, Poughkeepsie, NY)	
SP000840	(Shop report by Jeff Jerman, dated 1/15/07 at Burlington Mall, Burlington, MA)	
SP000841	(Shop report by Jimmy Fisher, dated 1/15/07 at Smith Haven Mall, Lake Grove, NY)	
SP000841-SP000843	(Shop report by Joseph Seth, dated 1/15/07 at Staten Island Mall, Staten Island, NY)	
SP000843-SP000844	(Shop report by Alex Roitman, dated 1/15/07 at Woodbridge Mall, Woodbridge, NJ)	
SP000844-SP000845	(Shop report by Jerry Petrillo, dated 1/16/07 at Oxford Valley Mall, Oxford Valley, PA)	
SP000845-SP000846	(Shop report by Rodney West, dated 1/16/07 at Christiana Mall)	
SP000846-SP000847	(Shop report by Nicholas Sanferraro, dated 1/16/07 at Deptford Mall, Deptford, NJ)	
SP000847-SP000848	(Shop report by Ken Ross, dated 1/16/07 at Providence Place Mall)	
SP000848-SP000849	(Shop report by Paul Mahoney, dated 1/16/07 at Freehold Raceway Mall, Freehold, NJ)	
SP000849-SP000850	(Shop report by Paul Mahoney, dated 1/17/07 at East Brunswick Mall, East Brunswick, NJ)	
SP000850	(Shop report by John Demma, dated 1/17/07 at West Farms Mall, West Hartford, CT)	
SP000850-SP000851	(Shop report by Michael Grinnan, dated 1/17/07)	
SP000851-SP000852	(Shop report by Dave Kapij, dated 1/17/07 at Holyoke Mall, Holyoke, MA)	
SP000852-SP000853	(Shop report by Michael Grinnan, dated 1/18/07 at Moorestown Mall)	

SP000853	(Shop report by Louis Dallojacono, dated 1/18/07 at Select Comfort store on 3rd avenue and 61st Street, New York, NY)	
SP000853	(Shop report by Robert Ringler, dated 1/18/07 at South Shore Plaza, Braintree, MA)	
SP000853-SP000854	(Shop report by Bob Gorman, dated 1/20/07 at Bay Shore)	
SP000854	(Shop report by Mark Reisman, dated 1/24/07 at Monmouth Mall, Eatontown, NJ)	
SP000854, SP000839	(Shop report by Joseph Kilty, dated 1/25/07 at Emerald Square Mall, Attleboro, MA)	
SP000855	(Shop report by Joseph Kilty, dated 1/25/07 at Select Comfort store Providence, RI)	
SP000855-SP000856	(Shop report by Chuck Cole, dated 1/25/07 at Jersey Gardens Mall, Elizabeth, NJ)	
SP000856-SP000857	(Shop report by Michael Siminski, dated 1/25/07 at Exton Square Mall)	
SP000857-SP000858	(Shop report by Steve Puran, dated 1/26/07 at Select Comfort store on Broadway, New York, NY)	
SP000858-SP000859	(Shop report by Deborah Zaffron, dated 1/26/07 at Roosevelt Field Mall)	
SP000859-SP000860	(Shop report by Deborah Zaffron, dated 1/26/07 at Westfield Mall, Bay Shore, NY)	
SP000860	(Shop report by Anthony Bender, dated 1/26/07 at Lake Grove)	
SP000860-SP000861	(Shop report by Barry Rosenberg, dated 1/26/07 at Eatontown Mall)	
SP000861	(Shop report by Marilyn Sinex, dated 1/26/07 at The Shops at Saucon Valley)	
SP000861-SP000862	(Shop report by JD Devlin, dated 1/26/07 at Deptford Mall, Deptford, NJ)	
SP000862-SP000863	(Shop report by Joseph Kilty, dated 1/30/07 at Crystal Mall, Waterford, CT)	
SP000863-SP000864	(Shop report by Jacqueline Gruman, dated 2/06/07 at Coventry Mall, Pottstown, PA)	
SP000864-SP000865	(Shop report by John Demma, dated 2/08/07 at Buckland Hills Mall, Manchester, CT)	
SP000865	(Shop report by John Demma, dated 2/08/07 at West Farms Mall, West Hartford, CT)	
SP000865-SP000866	(Shop report by Devon Mongillo, dated 2/08/07 at Better Bedding)	

SP000879-SP000880	(Shop report by Dave Kapij, dated 11/06 in Manchester, CT)	
SP000881-SP000882	(Shop report by Dave Kapij, dated 11/30/06 at Holyoke Mall, Holyoke, MA)	
SP000886	(Shop report by Jeff Jerman, dated 11/03/06 at Rockingham Mall, Salem, NH)	
SP000887	(Shop report by Robert Ringler, dated 11/08/06 at South Shore Plaza, Braintree, MA)	
SP000891	(Shop report by Dean Weinstein, dated 11/30/06 at Emerald Mall, Attleboro, MA)	
SP000948-SP000981	(Slumberland>Select Comfort Workbook/Training Manual)	
SP000983-SP001000	(Sleep Number Bed Brochure)	(**)
SP001001-SP01004	(Sleep Number Bed Price Guide)	(**)
SP001068	(Shop report by Thomas Higgins, dated 1/12/07 at Garden State Plaza, Paramus, NJ)	
SP001068-SP001069	(Shop report by Keith Peluso, dated 1/12/07 at Short Hills Mall)	
SP001070	(Shop report by Keith Peluso, dated 1/12/07)	
SP001143-SP001160	(Shop report by Deborah Zaffron, dated 3/09/07 at Smith Haven Mall)	
SP001161-SP001170	(Shop report by Deborah Zaffron, dated 3/08/07 at Walt Whitman Mall)	
SP001172-SP001173	(Shop report by Peter Barclay, dated 4/04/07 at Garden State Plaza, Paramus, NJ)	
SP001206-SP001208	(Shop report by Larry Veach, dated 4/05/07 at Bridgewater Mall, Bridgewater, NJ)	
SP001209-SP001211	(Shop report by Ed Jasko, dated 4/17/07 at Newport Centre Mall)	
SP001212-SP001214	(Shop report by Robert Gorman, dated 4/11/07 at South Shore Mall, Bay Shore, NY)	
SP001215	(Shop report by Scott Dobrin, dated 4/05/07 at Menlo Park)	
SP001216-SP001217	(Shop report by James Tripoli, dated 4/04/07 at the Paramus Park Mall)	
SP001229	(Shop report by Deborah Zaffron, dated 3/09/07 at Smith Haven Mall, Walt Whitman Mall)	
SP001230	(Shop report by Thomas Higgins, dated 4/04/07 at Garden State Plaza, Paramus, NJ)	

SP001231-SP001232	(Shop report by John Pergolizzi, dated 4/05/06 at Orange, CT, Manchester, CT and Newington, CT)	
SP001467-SP001468	(Sleepy's Wind-Up Agreement)	
SP001584-SP001595	(Select Comfort Corporation Dealer Agreement between Sleepy's, Inc. and Select Comfort Wholesale Corporation, dated June 17, 2005)	
SP002365	(Personal Preference Comparison Chart)	
SP002589	(January 23, 2007 letter from Bill McLaughlin to Harry Acker)	(**)
SP017880-SP017881	(Notes re: Sleepy's sales progress)	
No Bates Number	Chart created by counsel reflecting radio advertisements run by Sleepy's, featuring Select Comfort	
No Bates Number	Sleep Number by Select Comfort, Select Force Inside Edition Q2-2007 (DVD produced by Select Comfort) (no Bates number)	
No Bates Number	February 2007 - MTM Meeting Videos (DVD produced by Select Comfort - no Bates number)	
No Bates Number	Select Force Inside Edition Q2-2006 (DVD produced by Select Comfort) (no Bates number)	
No Bates Number	Select Force Inside Edition Q2-2006 (DVD produced by Select Comfort - no Bates number)	
No Bates Number	SCTV Q1 (DVD produced by Select Comfort - no Bates number)	
No Bates Number	Select Force View - October 2005 (VHS Tape produced by Select Comfort - no Bates number)	
No Bates Number	Select Comfort RPP: Retail Partner Program Shop Report Score Sheet (no Bates number)	
No Bates Number	Select Comfort Invoice # SMZ 081105 SELE, dated 08/11/05	
No Bates Number	Select Comfort Invoice # MLW 092205 SELE, dated 09/22/05	
No Bates Number	Select Comfort Invoice # MLW 101005 SELE, dated 10/10/05	
No Bates Number	Select Comfort Invoice # MLW 101205 SELE, dated 10/12/05	
No Bates Number	Select Comfort Invoice # MLW 102105 SELE, dated 10/21/05	
No Bates Number	Select Comfort Invoice # MLW 110805 SELE, dated 11/08/05	

No Bates Number	Select Comfort Invoice # MLW 121605 SELE, dated 12/16/05	
No Bates Number	Select Comfort Invoice # MLW 012306 SELE, dated 01/23/06	
No Bates Number	Select Comfort Invoice # MLW 022206 SELE, dated 02/22/06	
No Bates Number	Select Comfort Invoice # MLW 022706 SELE, dated 02/27/06	
No Bates Number	Select Comfort Invoice # MLW 030806 SELE, dated 03/08/06	
No Bates Number	Select Comfort Invoice # MLW 031606 SELE, dated 03/16/06	
No Bates Number	Select Comfort Invoice # MLW 032306 SELE SAM, dated 03/23/06	
No Bates Number	Select Comfort Invoice # MLW 0327006 SELE, dated 03/28/06	
No Bates Number	Select Comfort Invoice # MLW 033006 SELE, dated 03/31/06	
No Bates Number	Select Comfort Invoice # MLW 041706 SELE, dated 04/17/06	
No Bates Number	Select Comfort Invoice # MLW 042006 SELE, dated 04/20/06	
No Bates Number	Select Comfort Invoice # MLW 042606 SELE, dated 04/26/06	
No Bates Number	Select Comfort Invoice # MLW 051906 SELE, dated 05/19/06	
No Bates Number	Select Comfort Invoice # MLW 060106 SELE, dated 06/02/06	
No Bates Number	Select Comfort Invoice # MLW 071806 SELE, dated 06/02/06	
No Bates Number	Select Comfort Invoice # MLW 062306 SELE, dated 06/13/06	
No Bates Number	Select Comfort Invoice # MLW 061406 SELE, dated 06/14/06	
No Bates Number	Select Comfort Invoice # MLW 101806 SELE, dated 06/19/06	
No Bates Number	Select Comfort Invoice # MLW 072106 SELE, dated 07/10/06	
No Bates Number	Select Comfort Invoice # MLW 072706 SELE, dated 07/17/06	
No Bates Number	Select Comfort Invoice # MLW 08106 SELE, dated 07/27/06	
No Bates Number	Select Comfort Invoice # MLW 091206 SELE, dated 08/27/06	
No Bates Number	Select Comfort Invoice # MLW 092706 SELE, dated 09/16/06	
No Bates Number	Select Comfort Invoice # MLW 092606 SELE, dated 09/20/06	

No Bates Number	Select Comfort Invoice # SMS 102006 SELE, dated 10/09/06	
No Bates Number	Select Comfort Invoice # SMS 102406 SELE, dated 10/13/06	
No Bates Number	Select Comfort Invoice # SMS 102406 SELE PIECE, dated 10/25/06	
No Bates Number	Select Comfort Invoice # SMS 11160 SELE, dated 11/07/06	
No Bates Number	Select Comfort Invoice # SMS 120106 SELE, dated 11/21/06	
No Bates Number	Select Comfort Invoice # SMS 120506 SELE, dated 11/21/06	
No Bates Number	Select Comfort Invoice # SMS 121806 SELE PRICE, dated 11/29/06	
No Bates Number	Select Comfort Invoice # SMS 120806 SELE, dated 11/30/06	
No Bates Number	Select Comfort Invoice # SMS 010507 SELE PRICE, dated 12/12/06	
No Bates Number	Select Comfort Invoice # SMS 122706 SELE, dated 12/19/06	
No Bates Number	Select Comfort Invoice # SMS 011507 SELE, dated 01/05/07	
No Bates Number	Select Comfort Invoice # SMS 013007 SELE, dated 01/24/07	
No Bates Number	Select Comfort Invoice # SMS 012907 SELE, dated 01/29/07	
No Bates Number	Select Comfort Invoice # SMS 022807 SELE CREDIT, dated 01/31/07	
No Bates Number	Select Comfort Invoice # SMS 030507 SELE, dated 02/21/07	
No Bates Number	Select Comfort Invoice # SMS 030607 SELE, dated 02/22/07	
No Bates Number	Select Comfort Invoice # SMS 041107 SELE, dated 02/22/07	
No Bates Number	Select Comfort Invoice # SMS 031507 SELE, dated 03/01/07	
No Bates Number	Select Comfort Invoice # SMS 040907 SELE, dated 03/17/07	
No Bates Number	Shop report recording by Dave Kapij, entitled MANCHESTER CT. SELECT COMFORT G98 11.10.06.MP3 - produced on 1/14/09	
No Bates Number	Shop report recording by Dave Kapij, entitled VA004_032KBPS_061108_113956.MP3 - produced on 1/14/09	

No Bates Number	Shop report recording by Dave Kapij, entitled VA022_016KBPS_061130_160018.MP3 - produced on 1/14/09	
No Bates Number	Shop report recording by Deborah Zaffron, entitled DW_A0004.wav - produced on 1/14/09	
No Bates Number	Shop report recording by Deborah Zaffron, entitled DW_A0051.wav - produced on 1/14/09	
No Bates Number	Shop report recording by Deborah Zaffron, entitled DW_A0053.wav - produced on 1/14/09	
No Bates Number	Shop report recording by Joseph Kilty, entitled Track01.mp3 - produced on 1/14/09	
No Bates Number	Shop report recording by Joseph Kilty, entitled Track02.mp3 - produced on 1/14/09	
No Bates Number	Shop report recording by Joseph Kilty, entitled Track03.mp3 - produced on 1/14/09	
No Bates Number	Shop report recording by Anthony Colon, entitled R-26_A.wav - produced on 1/15/09	
No Bates Number	Shop report recording by Jim Constantinides, entitled select_comfort_1.12_A.1.mp3 - produced on 1/15/09	
No Bates Number	Shop report recording by Steven Puran, entitled N-36_A.wav - produced on 1/15/09	
No Bates Number	Shop report recording entitled Bwar72st_4_12_A.wav - produced on 1/15/09	
No Bates Number	Shop report recording by Carl Ferrara, entitled K5-8_A.wav - produced on 1/15/09	
No Bates Number	Shop report recording by Mike Grinnan, entitled Mystery Shop of Select Comfort - Mike Grinnan - previously recor - 2.wma - produced on 1/28/09	
No Bates Number	Shop report recording by Mike Grinnan, entitled Mystery Shop of Select Comfort - Mike Grinnan - previously recor - 2 part2.wma - produced on 1/28/09	
No Bates Number	Transcript of 3/09/07 shop report recording - shop conducted by Deborah Zaffron at Smith Haven Mall (Exhibit 8 to 1/15/09 affidavit of L. Donald Prutzman)	

No Bates Number	Transcript of 1/26/07 shop report recording - shop conducted by Deborah Zaffron at Roosevelt Fields Mall (Exhibit 9 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of 1/26/07 shop report recording - shop conducted by Deborah Zaffron at Westfield Mall (Exhibit 10 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of 1/25/07 shop report recording - shop conducted by Joseph Kilty at Emerald Square Mall (Exhibit 11 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of 1/30/07 shop report recording - shop conducted by Joseph Kilty at Crystal Mall (Exhibit 12 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of 1/25/07 shop report recording - shop conducted by Joseph Kilty at the Providence, RI Select Comfort store (Exhibit 13 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of 11/08/06 shop report recording - shop conducted by David Kapij at the Enfield, CT Select Comfort store (Exhibit 14 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of the 11/10/06 shop report recording - shop conducted by David Kapij at the Manchester, CT Select Comfort store (Exhibit 15 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of the 11/30/06 shop report recording - shop conducted by David Kapij at the Holyoke Mall (Exhibit 16 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of the 1/12/07 shop report recording - shop conducted by Jim Constantinides at the Queens Center Mall (Exhibit 17 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of a shop report recording - shop conducted by Carl Ferrara (Exhibit 18 to 1/15/09 affidavit of L. Donald Prutzman)	
No Bates Number	Transcript of shop report recording - shop conducted by Mike Grinnan (produced to Select Comfort on 1/29/09)	
No Bates Number	Internet websites of Select Comfort, January 2005 to present.	

**DEFENDANTS' EXHIBITS<sup>10 11</sup>**

Bates Number	Description	No Objection on Authenticity (*) or No Objection on Any Ground (**)
SP000003-000005	03/12/07 Email from Bruce Bauman to Mike Bookbinder, cc: Keith Spurgeon, Mark Kimball re: Bill contacting Harry	(*)
SP000020-000067	03/30/2004 Select Comfort PowerPoint Presentation	(*)
SP000069-000075	09/06/06 Email between Mike Bookbinder, Bruce Bauman and Ira Fishman re: Postponing Thursday's meeting	(*)
SP000125	06/01/05 Email from Adam Blank to Tim Werner, Bruce Bauman and Mike Bookbinder re: Proposed Contract Language	(*)
SP000131-000134	06/10/05 Email between Bruce Bauman, Adam Blank, Mike Bookbinder and Tim Werner re: Contract	(*)
SP000135-000147	05/24/05 Email from Bruce Bauman to Mike Bookbinder, Adam Blank cc: Tim Werner re: Contract and Action Items	(*)
SP000182-194	06/17/05 Select Comfort Corporation Dealer Agreement between Select Comfort Wholesale Corporation and Sleepy's, Inc.	(**)
SP000224-000233	Sleepy's Business Review, 01/03/07	(*)
SP000509-000522	06/08/05 Email from Bruce Bauman to Mike Bookbinder, Adam Blank and Tim Werner re: Contract	(*)
SP000551-000563	05/27/05 Email from Adam Blank to Bruce Bauman, Tim Werner and Mike	(*)

<sup>10</sup> In accordance with Judge Platt's Individual Practice Rule 3(A)(x), Defendants have listed exhibits to be used in its case in chief. Defendants reserve the right to amend, change, modify or add exhibits, including, but not limited to, rebuttal exhibits to the proposed list of exhibits. Defendants reserve the right to rely on any documents identified on Plaintiff's proposed list of exhibits.

<sup>11</sup> Plaintiff objects to Defendants' purported reservation of rights to amend, change, modify or add exhibits, as inconsistent with this Court's individual practices.

	Bookbinder re: Comments to Dealer Agreement	
SP000609	Bullet points of what to learn about Select Comfort	
SP000610-000613	Select Comfort Mattresses Instructions last updated November 28, 2006	
SP000614-000617	06/19/07 Email from Mike Bookbinder to Dennis Exline re: shopping select comfort stores	
SP000618-000642	2006 Memo from AM's and RM's to Harry Acker re: Select Comfort Shop	
SP000682-000684	09/01/08 Memo from Ira Fishman to Harry Acker re: Select Comfort Pros and Cons	(*)
SP000685-000686	04/07/05 Memo from Mike Bookbinder to Nassau & Suffolk Sales Force re: Select Comfort Shops	(*)
SP000937	Memo from Mike Bookbinder and Tim Werner re: Next Phase To Roll Out Select Comfort	
SP000943	Tape Transcription, 07/28/05	(*)
SP000944-000945	03/23/05 Correspondence from Harry Acker to Keith Spurgeon Re: carrying the Select Comfort product	(*)
SP000982	Guide to Sleep Number Beds	(*)
SP001464-001466	01/15/07 Memo from Mike Bookbinder to Dennis Exline re: Shopping Select Comfort Stores	(*)
SP001469	Sleepy's Advertisement	(*)
SP001611-001612	News Release - New Jersey files suit against mattress chain, 03/01/04	
SP001629-001651	03/21/06 Thomas Weisel Partners Equity Research	
SP001665-001666	Memo from Mike Bookbinder to Harry Acker re: Select Comfort	(*)
SP001667-001689	Harvey v. Sleepy's, Inc. et. al, Superior Court of New Jersey, Complaint and cover letters from State of New Jersey	(*)
SP001806	12/11/07 Email from Mike Bookbinder to Dennis Exline re: Sleep Train	(*)
SP001807	12/11/07 Email from Dennis Exline to Mike Bookbinder re: NY shop going forward	(*)
SP001825-001826	12/07/07 Email from Kathy Gravatt to Dennis Exline re: Competitor Shops	(*)
SP001836-001838	12/24/07 Email from Mike Bookbinder to	(*)

	Dennis Exline re: Roosevelt Shop	
SP001839-001843	06/27/07 Email from Kathy Gravatt to Dennis Exline re: Select Comfort Shops	(*)
SP001871	01/15/07 Email between Dennis Exline and Mike Bookbinder re: Shopping Select Comfort Stores	(*)
SP001873-001874	12/27/07 Email from Mike Bookbinder to Dennis Exline re: Select Comfort	(*)
SP001875	01/15/07 Email from Mike Bookbinder to Dennis Exline re: Shopping Select Comfort Stores	(*)
SP001876-001877	Undated Memo from Mike Bookbinder to Dennis Exline re: Shopping Select Comfort Stores	(*)
SP002023-002024	08/07/06 Email Mike Bookbinder to Harry Acker re: Select Comfort Percentage of Sales	(*)
SP002025-002075	09/22/06 Memo from The Sales Force to Mike Bookbinder, cc: Sales Team re: Select Comfort Questionnaire to the Sales Force	(*)
SP002089	04/08/05 Email between Don Bishop and Michael Bookbinder re: Select Comfort	(*)
SP002183-002184	03/23/05 Letter from Harry Acker to Keith Spurgeon	(*)
SP002185-002187	06/30/05 Memo from John Richardson to Harry Acker cc: Mike Bookbinder	(*)
SP002188	09/09/05 Memo from Bruce Davis to Harry Acker re: Week 33 Report	(*)
SP002365	Sleepy's Advertisement	(*)
SP002517	09/08/06 Memo from Harry to Mike Bookbinder re: Voicemail 9-8-06; Select Comfort Questionnaire	(*)
SP002522-002524	04/26/07 Email from Howard Scheines to RVP's, cc: Tony Arella, Harry Goodman and Ira Fishman re: Select Comfort Pullout Schedule	(*)
SP002527-002528	04/27/07 Email from Howard Scheines to Ira Fishman, John Richardson, Harry Goodman, cc: Sean Jockel re: Select Comfort Pickup Schedule including all stops	(*)
SP002530	Questions on Salespeople in Select Comfort Stores	
SP002531	01/09/07 Email from Mike Bookbinder to	(*)

	RVP's, Ira Fishman re: Shopping Select Comfort Stores	
SP002573	04/24/07 Email from Tony Arella to RVP's, Dennis Zezas, Howard Scheines, Edward Finn, Ira Fishman, Harry Goodman re: POP Select Comfort	(*)
SP002599-002600	04/25/07 Email from Bruce Bauman to Tony Arella, Ira Fishman, Harry Goodman, cc: Larry Cronkhite re: Select Comfort Pullout Schedule	(*)
SP008791	01/04/07 Memo from Harry Acker to Sales Force, cc: Mike Bookbinder re: Voicemail 01/03/07: Sleepy's Rules	(*)
SP008791A	01/29/07 Memo from Bruce Bauman to various re: 01/13/07 V/M Response from Bruce Bauman	(*)
SP008792	01/29/07 Memo from Bruce Bauman to various re: 01/13/07 V/M Response from Bruce Bauman	(*)
SP008793	Tape Transcription, 01/04/05	(*)
SP008794	02/16/06 Memo from Harry Acker to Sales Force, cc: Mike Bookbinder, Jenn re: 01/06/06 voicemail: Select Comfort	(*)
SP008795-008797	Tape Transcription, 01/11/06	(*)
SP008798-008800	Tape Transcription, 01/18/06	(*)
SP008801-008805	01/26/06 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: 1-12-06 Voicemail Clarification and 01/30/06 Memo from Alan Good & Timothy Wilson to Harry, cc Mike Bookbinder Re Reply to 1-23-06 Voicemail Clarification	(*)
SP008806	02/03/06 Memo from Harry Acker to Sales Force, cc Executive Sales Team re: 02/01/06 Voicemail: Can We Live Without SA	(*)
SP008807-008810	Tape Transcription, 02/08/06	(*)
SP008811	02/08/07 Memo from Harry Acker to Mike Bookbinder and Ira Fishman re: Requested Select Comfort Info	(*)
SP008812	Tape Transcription, 02/09/06	(*)
SP008813-008816	Tape Transcription, 02/09/06	(*)
SP008817-008818	Tape Transcription, undated	(*)
SP008819-008820	Tape Transcription, 02/22/06	(*)
SP008821-008822	Tape Transcription, 02/23/06	(*)
SP008823-008831	Tape Transcription, 03/01/06	(*)

SP008832-008833	Tape Transcription, 03/01/06	(*)
SP008834	Tape Transcription, 03/11/05	(*)
SP008835-008841	Tape Transcription, 03/14/05	(*)
SP008842-008843	Tape Transcription, 03/14/05	(*)
SP008844	Tape Transcription, 03/16/05	(*)
SP008845-008847	04/14/06 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: 04/05/06 Voicemail: Sell Select Comfort	(*)
SP008848-008849	05/24/06 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: 05/22/06 Voicemail: It's an Investment	(*)
SP008850-008852	05/27/05 Memo from Harry Acker to Sales Force, cc: Mike Bookbinder re: 05/26/05 Voicemail re: Don't Miss the Boat	(*)
SP008853-008854	07/01/05 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: 06/22/05 Voicemail: The Industry is Changing	(*)
SP008855-008856	07/14/05 Memo from Harry Acker to Various re: 07/14/05 Voicemail: Should We Run Our Own Commercials	(*)
SP008857	Tape Transcription, 07/27/05	(*)
SP008858-008859	07/27/06 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: Voicemail Response to 235's Messages	(*)
SP008860	Tape Transcription, 08/08/05	(*)
SP008861-008866	Undated Memo from Harry Acker to Sales Force, cc Mike Bookbinder Re Voicemail 08/08/06: Advertising/Mattress Protector "Sales Pitch"	(*)
SP008867	Tape Transcription, 08/14/06	(*)
SP008868-008873	Tape Transcription, 08/28/06	(*)
SP008874-008877	Tape Transcription, 08/29/06	(*)
SP008878	09/08/06 Memo from Harry Acker, cc: Mike Bookbinder re: Voicemail 09/08/06: Select Comfort Questionnaire	(*)
SP008879	Tape Transcription, 09/13/05	(*)
SP008880-008881	09/20/05 Memo from Harry Acker to Sales Force, cc: Mike Bookbinder, re: 09/16/05 voicemail: Select Comfort Training	(*)
SP008882-008886	Tape Transcription, 09/21/05	(*)
SP008887	Tape Transcription, 09/26/05	(*)
SP008888	Tape Transcription, 09/26/05	(*)
SP008889	09/30/05 Memo from Harry Acker to Sales Force re: 09/28/08 Voicemail: What Happens When you Show it	(*)

SP008890-008891	Tape Transcription, 09/29/05	(*)
SP008892-008893	Tape Transcription, 10/03/06	(*)
SP008894-008896	Tape Transcription, 10/17/05	(*)
SP008898-008899	Tape Transcription, 11/14/05	(*)
SP008900-008903	Tape Transcription, 12/05/06	(*)
SP008904	12/09/05 Memo from Mike Bookbinder to Harry Acker cc: Adam Blank Re Select Comfort Rollout	(*)
SP008905-008907	12/13/06 Memo from Harry Acker to Sales Force, cc: Mike Bookbinder re: Voicemail: 12/12/06: New York Visit	(*)
SP008908	11/24/06 Email from Adam Blank to Dennis Exline re: private firm	(*)
SP008909-008910	11/27/06 Memo from Sam Retenski to Mike Bookbinder, cc: Adam Blank, Dennis Exline re: Select Comfort Areas with Addresses	(*)
SP008911	11/27/06 Email from Dennis Exline to Adam Blank, Mike Bookbinder re: Competitor Shops	(*)
SP008912	11/28/06 Email from Mike Bookbinder to Adam Blank, cc: Dennis Exline, Sam Retenski re: Need More	(*)
SP008913	11/24/06 Email from Adam Blank to Dennis Exline, cc: Mike Bookbinder re: all shops discussed	(*)
SP008914	11/24/06 Email from Adam Blank to Dennis Exline re: WE WANT TO KNOW SPECIFICALLY WHAT SELECT COMFORT SAYS ABOUT BETTER BEDDING	(*)
SP008915	11/20/06 Email from Adam Blank to Dennis Exline re: competitor shops	(*)
SP008916	01/04/07 Memo from Harry Acker to Sales Force, cc Mike Bookbinder re: Voicemail 01/03/07: Sleepy's Rules	(*)
SP008917-008918	Tape Transcription, 01/26/07	(*)
SP008919	01/29/07 Memo from Bruce Bauman to David Acker, Mike Bookbinder and Adam Blank re: 01/13/07 Voice mail Response from Bruce Bauman	(*)
SP008920-008923	Tape Transcription, 03/09/05	(*)
SP008924	04/06/05 Memo from Sam Retenski to Harry Acker, cc: Mike Bookbinder, Adam Blank re: Conference call with Keith	(*)

	Spurgeon	
SP009050	Tape Transcription, 01/08/07	(*)
SP009051-009052	03/30/06 Email from Stephanie Wardach to Eileen O'Hara, cc: Cindy Rosenfield re: Radio 4/4 thru 4/15	(*)
SP009053-009059	Tape Transcription, 11/06/06	
SP009061-009067	Tape Transcription, 11/06/06	(*)
SP009068-009071	Tape Transcription, 09/04/07	(*)
SP009072-009074	Tape Transcription, 02/19/07	(*)
SP009084	Tape Transcription, 03/11/05	(*)
SP009085	Tape Transcription, 03/14/05	(*)
SP009086	03/22/05 Letter from Harry Acker to Keith Spurgeon, Re possible sales partnership	
SP009095	03/23/05 Letter from Sleepy's to Keith Spurgeon	(*)
SP009096-009097	05/27/05 Memo from Harry Acker to Sales Force re: 05/26/05 Voicemail - Don't Miss the Boat	(*)
SP009098	07/26/05 Memo from Mike Bookbinder to Harry Acker re: Select Comfort Press Conference	(*)
SP009099	Tape Transcription, 07/27/05	(*)
SP009100	Tape Transcription, 07/28/05	(*)
SP009101	Tape Transcription, 08/08/05	(*)
SP009103	Tape Transcription, 09/13/05	(*)
SP009105-009106	09/20/05 Memo from Harry Acker to Sales Force re: 09/16/05 Voicemail - Select Comfort Training	(*)
SP009107	Tape Transcription, 09/26/05	(*)
SP009110-009111	Tape Transcription, 11/14/05	(*)
SP009113	12/9/05 Memo from Mike Bookbinder to Harry Acker re: Select Comfort Rollout	(*)
SP009115	Tape Transcription, 01/30/05	(*)
SP009116-009119	Tape Transcription, 02/08/06	(*)
SP009120-009122	Tape Transcription, 02/09/06	(*)
SP009126	04/07/05 Memo from Mike Bookbinder to Nassau and Suffolk Sales Force re: Select Comfort Shops	(*)
SP009127-009128	04/14/06 Memo from Harry Acker to Sales Force re: 04/05/06 Voicemail – Sell Select Comfort	(*)
SP009129	06/02/06 Memo from James Patch to Harry Acker cc: MB, DC, R-45 re: Select Comfort Training Proposal	
SP009130	08/07/06 Memo from Mike Bookbinder to	(*)

	Harry Acker re: Select Comfort Percentage of Sales	
SP009131	Tape Transcription, 08/14/06	(*)
SP009132-009134	Tape Transcription, 08/29/06	(*)
SP009135	09/12/06 Memo from Christopher Strivelli to Harry Acker re: Date of Idea – 09/01/06 – Select Comfort Deliveries	(*)
SP009136	Tape Transcription, 10/03/06	(*)
SP009152-009154	Tape Transcription, 12/05/06	(*)
SP009157	04/02/07 Memo from Johnny Walker to Harry Acker re: Select Comfort	(*)
SP009158	04/20/07 Memo from Harry Acker to Sales Force re: Voicemail 04/20/07 Select Comfort Reason	(*)
SP009182-009183	07/01/05 Memo from Harry Acker to Sales Force re: 06/22/05 Voice Mail - The Industry is Changing	(*)
SP009184-009185	01/30/07 Memo from Harry Acker to Mike Bookbinder cc: Adam Blank re: 01/20/07 Regarding Select Comfort and Numbers	(*)
SP013237-013248	<i>Sleepy's Agrees to pay \$200,000 to Resolve Complaints and Settle Deceptive Sales Charges</i> , www.nyc.gov, May 14, 2007	(*)
SP017795-017997	Tape Transcription, 01/18/06	(*)
SP017798-017799	Tape Transcription, 02/22/06	(*)
SP017800-017801	07/14/05 Memo from Harry Acker to Various re: 07/14/05 Voicemail – Should we run our own commercials	(*)
SP017814	01/29/07 Memo from Bruce Bauman to David Acker, Mike Bookbinder and Adam Blank re: 01/13/07 Voicemail response from Bruce Bauman	(*)
SP017816	Tape Transcription, 08/08/05	(*)
SP017817-017819	Tape Transcription, 08/29/06	(*)
SP017827-017828	Undated Memo from the Bed Bug Team to Harry Acker re: the bed bug problem	(*)
SP017919-017920	Tape Transcription, 09/16/06	(*)
SP018392-018393	02/03/06 Memo from Harry Acker to Sales Force re: 01/09/06 Voicemail re: I want you to understand	(*)
SP018394-018396	Tape Transcription, 01/26/07	(*)
SP018397	Tape Transcription, 01/30/05	(*)
SP018398-018401	Tape Transcription, 03/09/05	(*)
SP018402-18403	04/07/05 Memo from Mike Bookbinder to Nassau & Suffolk Sales Force re: Select	(*)

	Comfort Shops	
SP018404-018406	Tape Transcription, 04/28/05	(*)
SP018407-018409	Tape Transcription, 07/25/05	(*)
SP018410-018411	Tape Transcription, 07/25/05	(*)
SP018552-018554	Tape Transcription, 02/19/07	(*)
SP018555-018557	12/05/05 Email from Mike Bookbinder to Ira Fishman re: SC Interviews	(*)
SP020724-020725	<i>State Charges Sleepy's with Fraud</i> , Asbury Park Press, 03/02/04	
SP020726-020778	Harvey v. Sleepy's et al Final Consent Judgment, Superior Court of New Jersey, 12/23/04	
SP020830-020836	Tape Transcription, 09/18/06	(*)
SP020837-020842	Tape Transcription, 08/16/05	(*)
SP020846	08/05/05 Memo to Harry Acker from Dan J. re: Focus Group in CT	(*)
SP020847-020848	Email dated 08/05/05 from John Pergolizzi, cc: Paul Cavaseno, Mike Bookbinder, Ira Fishman, David Acker, Gregg Stuart, Harry Goodman, Dan Jordan and Dino Cifelli	(*)
SP020855-020858	08/06/05 Memo from Paul Cavaseno to Harry Acker re: Focus Group – New York 08/02/05	(*)
SP020865-020867	08/03/05 Memo from Cindy Rosenfield to Advertising team re: Focus Group – New York 08/02/05	(*)
SP020913-020916	03/09/06 Email from Regina to Harry Acker and Executive Sales Team re: Voice Mail Messages from RM's: Dirt on the Competition	(*)
SP020974-020979	09/29/06 Email from DM's to Harry Acker re: Ideas for Bull Meeting	(*)
SP020980-020983	Tape Transcription, 02/19/07	(*)
SP020984-020986	03/08/04 Email from Harry to Various re: "BB"	(*)
SP020987-020988	09/09/05 Email from Don Bishop to Harry Acker, cc: Mike Bookbinder, Ira Fishman re: Week 29 Select Comfort	(*)
SP020989-020990	09/09/05 Memo from Bruce Davis to Harry Acker, cc: Mike Bookbinder, Ira Fishman, RA's re: Week 33 Report	(*)
SP020991-020996	09/29/06 Email from DM's to Harry Acker, cc: Mike Bookbinder re: Ideas for Bull Meeting	(*)

SP021027-021030	03/09/06 Memo from Regina to Harry Acker and Executive Sales Team, re: Voice Mail messages from RM's: Dirt on the Competition Week 9	(*)
SP021209-021215	Tape Transcription, 04/11/05	(*)
SP021216-021222	Tape Transcription, 04/11/05	(*)
SP021225-021244	Tape Transcription, 03/03/06	(*)
SP021245-021248	Tape Transcription, 02/09/07	(*)
SLCO0001475-0001481	Sleepy's Research	
SLCO0001495-0001508	Select Comfort Corporation Dealer Agreement - redline	
SLCO0001660-0001670	Sleepy's Business Review presentation 09/07/06	
SLCO0002182	05/26/05 Select Comfort Invoice	
SLCO0002652-0002667	Select Comfort Retail Partner Program Presentation 08/04/04	
SLCO0003026-0003034	Retail Partner Policies and Procedures Manual Published April 2002	(*)
SLCO0006435	Select Comfort 2004 Competitive Update Presentation	(*)
SLCO0006524	08/14/06 Email from Bruce Bauman to Mike Bookbinder, Ira Fishman and Keith Spurgeon re: Sleepy's store in Groton, CT selling Sleep Number beds	(*)
SLCO0006529	08/01/06 Email from Bruce Bauman to Mike Bookbinder, Ira Fishman and Keith Spurgeon re: Review Program Performance & Strategies	(*)
SLCO0006746-0006749	02/06/07 Email from Mike Bookbinder to Keith Spurgeon, cc: Adam Blank, Bruce Bauman re: Follow up from today's phone call and attaching February 6, 2007 to William McClaughlin re: Dealer Agreement with Sleepy's from Adam Singer	(*)
SLCO0006791-0006801	Sleepy's Business Review Presentation 01/03/07	
SLCO0006816-0006817	11/07/06 Email from Mike Bookbinder to Erik Fair, cc: Keith Spurgeon, Bruce Baumann re: Very Important	(*)
SLCO0006822	10/23/06 Email from Mike Bookbinder to Bruce Bauman, Ira Fishman, cc: Keith Spurgeon, Larry Cronkhite, Sean Swiderski re: Proposed Meeting Date	(*)

SLCO0006823	10/16/06 email from Mike Bookbinder to Bruce Bauman, cc: Ira Fishman re: Reschedule meeting and a question	(*)
SLCO0006824-0006833	09/15/06 Email from Mike Bookbinder to Bruce Bauman, Ira Fishman, cc:	(*)
SLCO0007234-0007279	Select Comfort Retail Partners March to 50,000 Beds – 07/26/06	
SLCO0007349-0007359	Select Comfort Retail Partner Strategy Assessment 07/20/07	
SLCO0008220	08/14/05 Email from Erik Fair to Bruce Bauman re: Select Comfort Employee Purchase Form	(*)
SLCO0008515	07/06/05 Email from Tim Werner to Various re: Materials for today's Retail Partner Initiative Meeting	
SLCO0008516-0008534	Select Comfort Retail Partner Program, 05/09/05	
SLCO0008711-0008740	Select Comfort Company Information	
SLCO0008829	01/17/05 Email from Tim Werner to Bruce Bauman and Keith Spurgeon re: Sleepy's and Select Comfort	
SLCO0009387-0009388	06/19/06 Email from Ira Fishman to Darren Balter, cc: various re: Tips for Sleep Number Beds	(*)
SLCO0009841-0009842	04/10/06 Email from Ira Fishman to Bruce Bauman cc: Mike Bookbinder, Sean Swiderski, Alan Yamaji re: Healthy Back	(*)
SLCO0009902-0009924	03/21/06 Thomas Weisel Partners Equity Research	
SLCO0010045	02/08/06 Email from Tim Werner to Bruce Bauman re: Select Comfort upset	(*)
SLCO0010258	01/12/06 Email between Tim Werner and Bruce Bauman re: Select Comfort	(*)
SLCO0010261	01/12/06 Email between Tim Werner, Mike Bookbinder and Bruce Bauman re: Select Comfort	(*)
SLCO0010299	11/10/06 Email between Bruce Bauman and Keith Spurgeon re: Transcript of phone call	(*)
SLCO0010377-0010378	10/23/06 Email from Bruce Bauman to Mike Bookbinder, Ira Fishman, cc to various re: Proposed Meeting date	(*)
SLCO0010379	10/22/06 Email from Bruce Bauman to	(*)

	Mike Bookbinder, Ira Fishman, cc to various re: Proposed Meeting Date	
SLCO0010474-0010484	09/07/06 Sleepy's Business Review PowerPoint Presentation	
SLCO0018838-0018839	04/18/06 Email from Mike Bookbinder to Tim Werner, cc: Ira Fishman re: Sleepy's Selling Sleep Number Beds in CT	(*)
SLCO0018988-0018990	01/16/06 Email between Mike Bookbinder and Tim Werner re: Roll out plan phase 2	(*)
SLCO0019041	12/02/05 Email from Sam Retenski to Tim Werner, Keith Spurgeon and Mike Bookbinder re: We lost another Select Comfort sale	(*)
SLC0019042	12/02/05 Letter from Mike Bookbinder to Tim and Keith re: Select Comfort	(*)
SLCO0019043-0019044	12/02/05 Email from Sean Swiderski to Tom Werner re: price tags Select Comfort	(*)
SLCO0019045-0019049	To All Sleepy's Mattress Professionals	
SLCO0019050	11/30/05 Email between Mike Bookbinder and Tim Werner re: Lost Another SC	(*)
SLCO0019104-0019106	11/08/05 Email between Ira Fishman, Mike Bookbinder, Paul Cavaseno and Tim Werner re: Oceanside Sleepy's	(*)
SLCO0019132-0019134	10/31/05 Email from Ira Fishman to Tim Werner re: Select Comfort RTW	(*)
SLCO0019168	10/19/05 Email between Keith Spurgeon and Tim Werner re: A message from one of our Mattress Professionals	(*)
SLCO0019284-0019285	09/16/05 Letter from George Pazolt to Mary Schroko re: a customer complaint	
SLCO0019317-0019318	09/19/05 Email between Mike Bookbinder and Tim Werner re: Please confirm	(*)
SLCO0019325	09/16/05 Email from Mike Bookbinder to Tim Werner re: Harry would like to know	(*)
SLCO0019374	09/08/05 Email from Mike Bookbinder to Paul Cavaseno, John Pergolizzi, Dina Cifelli, Ira Fishman and Tim Werner re: Issues that have come up with Select Comfort	(*)
SLCO0019377	09/06/05 Email from Mike Bookbinder to Tim Werner re: Lost sales	(*)
SLCO0019503-	07/20/05 Email between Mike	(*)

0019504	Bookbinder, Tim Werner, Ira Fishman and Cindy Rosenfield re: The radio spots you sent us	
SLCO0063985-0063990	Select Comfort Gen3 Foundation vs. Boxspring Comparison Report – Revision A	
NS00006-00007	12/03/07 Email from Dennis Exline to Kathy Gravatt re: Questions for Competitor Shops	(*)
NS00075-00077	Select Comfort Mattresses Instructions last updated January 15, 2007	(*)
NS00078	11/29/06 Email from Dennis Exline to kgravatt@nationalshoppingservice.com , cc: Adam Blank re: Select Comfort shops quote	(*)
No Bates	June 26, 2009 Expert Report of Steven Schwartz	
No Bates	<i>Complaints Continue to Pile up for Connecticut Mattress-Seller Sleepy's</i> , Knight Ridder Tribune Business News, July 22, 2003	
No Bates	<i>Select Comfort tightens grip as top retailer</i> , Furniture Today, November 24, 2003	
No Bates	<i>New Jersey Suit Accuses Mattress Retailer of Deceptive Ads, Shoddy Products</i> , Knight Ridder Tribune Business News, March 2, 2004	
No Bates	<i>New Jersey suing mattress sellers</i> , NewsBank, March 2, 2004	
No Bates	<i>State charges Sleepy's with fraud</i> , NewsBank, March 2, 2004	
No Bates	<i>Suit by N.J. accuses Sleepy's of deceptive ads, shoddy mattresses</i> , NewsBank, March 2, 2004	
No Bates	<i>Complaints Continue to Pile up for Connecticut Mattress-Seller Sleepy's</i> , Knight Ridder Tribune Business News, July 22, 2003	
No Bates	<i>Select Comfort tightens grip as top retailer</i> , Furniture Today, November 24, 2003	
No Bates	<i>No rest for mattress sellers in sleep-deprived market – Retailers opening new outlets around the city; danger of overexpansion</i> , NewsBank, October 18, 2004	

No Bates	<i>Sleepy's will settle N.J. lawsuit, NewsBank, December 24, 2004</i>	
No Bates	<i>Sleepy's ends state lawsuit with a \$750,000 settlement, NewsBank, December 24, 2004</i>	
No Bates	<i>Mattress sellers to pay \$750,000 to settle N.J. charges – Authorities has accused Sleepy's Inc. of misleading customers and failing to deliver items as promised, NewsBank, December 25, 2004</i>	
No Bates	<i>Mattress Retailer Sleepy's to pay New Jersey agency \$750,000 settlement, Knight Ridder Tribune Business News, December 27, 2004</i>	
No Bates	<i>Customers see light at end of tunnel in battle with mattress retailer Sleepy's, Knight Ridder Tribune Business News, December 29, 2004</i>	
No Bates	<i>Rockaway Bedding settles lawsuit, NewsBank, July 8, 2005</i>	
No Bates	<i>Select Comfort solidifies lead in bedding retail, Furniture Today, August 15, 2005</i>	
No Bates	<i>New York City agency charges furniture retailers with consumer abuses, Knight Ridder Tribune Business News, October 28, 2005</i>	
No Bates	<i>Business Source Corporate, InFurniture, 11/28/2005, Vol. 6 Issue 15</i>	
No Bates	<i>Sleepy's is taking some lumps City accusing LI mattress chain and Jennifer Convertibles with a wide range of consumer abuses, NewsBank, October 28, 2005</i>	
No Bates	<i>Select Comfort widens lead at \$588M, Furniture Today, August 14, 2006</i>	
No Bates	<i>Sleepy's Agrees to Pay \$200,000 to Resolve Complaints and Settle Deceptive Sales Charges, NYC.gov, May 14, 2007</i>	
No Bates	<i>Sleepy's to pay \$200K to settle complaints, Industry News, June 4, 2007</i>	
No Bates	<i>Sleepy's to pay \$200K to settle complaints, NewsBank, June 4, 2007</i>	
No Bates	<i>Select Comfort remains unchallenged as No. 1, Furniture Today, August 13, 2007</i>	
No Bates	<i>Select Comfort still No. 1 in mattress sales, Furniture Today, August 11, 2008</i>	

No Bates	<i>Select Comfort stops sales to other retailers, Furniture Today, August 11, 2009</i>	
No Bates	01/11/07 Letter from Keith Spurgeon to Harry Acker	
No Bates	01/23/07 Letter from Mike Bookbinder to William McLaughlin	
No Bates	Tape Transcription, 11/06/06	
No Bates	11/05/08 Verified Statement Concerning Non-Existence of Audio Tapes of Shop Reports	(*)
No Bates	<i>Courant Finally Publishes Short Story on Sleepy's, but Leaves out Damaging Facts About its Key Advertiser, Connecticut Watchdog,</i> <a href="http://ctwatchdog.com/2009/08/19/courant-finally-publishes-short-story-on-sleepys-but-leaves-out-damaging-facts-about-its-key-advertiser">http://ctwatchdog.com/2009/08/19/courant-finally-publishes-short-story-on-sleepys-but-leaves-out-damaging-facts-about-its-key-advertiser</a> , August 19, 2009.	
No Bates	<i>Ap Story on Watchdog Firing, Connecticut Watchdog,</i> <a href="http://ctwatchdog.com/2009/08/18/ap-story-on-watchdog-firing">http://ctwatchdog.com/2009/08/18/ap-story-on-watchdog-firing</a> , August 18, 2009.	
No Bates	<i>Former Courant Watchdog Details What Led to His Dismissal, Connecticut Watchdog,</i> <a href="http://ctwatchdog.com/2009/08/18/former-courant-watchdog-details-what-led-to-his-dismissal">http://ctwatchdog.com/2009/08/18/former-courant-watchdog-details-what-led-to-his-dismissal</a> , August 18, 2009.	
No Bates	<i>Courant Trying to Salvage Reputation by Publishing Sleepy's Investigation Column, Connecticut Watchdog, August 18, 2009.</i>	
No Bates	<i>Sleepy's: The Bedbug Column The Courant Refused to Publish About its Prime Advertiser, Connecticut Watchdog,</i> <a href="http://ctwatchdog.com/2009/08/14/sleepys-the-bedbug-column-the-courant-refused-to-publish-about-its-prime-advertiser">http://ctwatchdog.com/2009/08/14/sleepys-the-bedbug-column-the-courant-refused-to-publish-about-its-prime-advertiser</a> , August 14, 2009.	
No Bates	<i>Courant Spin on Watchdog Departure, Connecticut Watchdog,</i> <a href="http://ctwatchdog.com/2009/08/17/courant-spin-on-watchdog-departure">http://ctwatchdog.com/2009/08/17/courant-spin-on-watchdog-departure</a> , August 17, 2009.	
No Bates	<i>Hartford Courant Lays Off Consumer</i>	

	<i>Columnist</i> , New York Times, August 17, 2009.	
No Bates	<i>Hartford Columnist's Departure Raises Questions</i> , Associated Press, August 18, 2009.	

Dated: New York, New York  
August 20, 2009

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SO ORDERED:

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U.S.D.J.